

More than a million migrants and refugees have crossed into Europe during last year sparking a crisis and creating division in an EU under debate. Migration is not only refugee crisis and involves more things. It is important to understand it. The aim of this book is to summarize the migration phenomenon, its causes, factors, and types focusing on the relevant dates to the European Union. The first part of the book analyses the general framework of migration: the stages of the phenomenon, causes, and a revision of the main theories which explain people international movements. The second part focuses on the migration flows in the European Union: colonization movement, evolution and conventions, and agreements. The third part analyses the regulation under EU Treaties and Derived law. Finally, current crisis and the role played by EU institutions were described. This book constitutes an essential reference to understand the migration phenomenon and its implications in the case of EU.

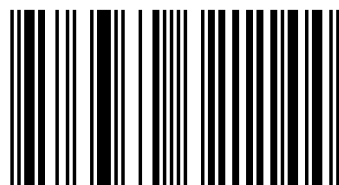
A new concern to a weaken EU



Nuria G. Rabanal
Jorge Miguel González Sánchez

Migrations: a transverse approach to the European Union

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MIGRATIONS: A TRANSVERSE APPROACH TO THE EUROPEAN UNION

Ms. Nuria González Rabanal
Mr. Jorge Miguel González Sánchez

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INDEX OF ABBREVIATIONS

AMIF: Asylum, Migration and Integration Fund

CCR: Convention for Children Rights

CEPOL: European Police College

CJEC: Court of Justice of the European Communities (Since 2009, Court of Justice of the European Union)

CPIAPPD: Convention for protection of individuals with regard to automatic processing of personal data

EASO: European Asylum Support Office

ECHR: European Convention for Human Rights

ECSC: European Community for Steel and Coal

EEC: (European Economic Community)

EES: Entry-Exit System

EHRC: European Human Rights Court

ESC: European Social Chart

EU: European Union

EUROPOL: European Police Office

GDP: Gross Domestic Product

ICCS: International Commission on Civil Status

ILO: International Labor Organization

IOM: International Organization for Migration

ISF: Internal Security Fund

ISS: Information Schengen System

NGO: Non - Governmental Organization

OHCHR: Office of the High Commissioner of Human Rights

SIS: Schengen Information System

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

VIS: Visa Information System

ABSTRACT

Migration is one of the biggest problems that the European Union is facing nowadays which is compromising the stability and prosperity of our community triggering other implications for the European Society.

To better tackle this topic, in this report we have studied migrations from a dual perspective: from a global view and the European Union approach. This way, we have deductively analyse what is migration, its categories, its explicative theories, and its causes and effects internationally to move forward to the specific case of the European Union defining the fundamental frameworks to comprehend what is happening in our Community: historically, normatively and institutionally.

Finally, we have gained an overall vision of the refugee crisis, and we have concluded which are the trends that the European Union is heading to, and which could be the best possible solutions to minimise the impact of this crisis.

KEYWORDS: International Migration, European Union Migration, Historical framework, normative framework, Institutional framework, Refugee Crisis.

RESUMEN

La migración es uno de los mayores problemas que la Unión Europea afronta actualmente y que está comprometiendo la estabilidad y prosperidad de nuestra comunidad, causando otras implicaciones para la sociedad europea.

Para entender mejor este asunto, en este informe hemos estudiado las migraciones desde una perspectiva dual: una vista global y el enfoque desde la Unión Europea. De este modo, hemos analizado deductivamente qué es la migración, sus categorías, sus teorías explicativas, y sus causas y efectos a nivel internacional para avanzar hacia el caso específico de la Unión Europea definiendo los marcos fundamentales para entender que sucede en nuestra comunidad: históricamente, normativamente e institucionalmente

Finalmente, hemos obtenido una visión global de la crisis de los refugiados y hemos concluido cuáles son las tendencias hacia las que camina la Unión Europea y cuáles pueden ser las posibles mejores soluciones para minimizar el impacto de la crisis.

PALABRAS CLAVE: Migración internacional, Migración en la UE, Marco histórico, Marco normativo, Marco institucional, Crisis de refugiados.

INTRODUCTION

The European Union is known to be suffering from one of the worst moments in its History owing to several factors that are compromising the stability and prosperity of our community: one of the biggest economic crises in decades, the raising of jihadism and terrorism, the polarization of the national politics and the proliferation of extremist right ideologies, the foreign affairs policy difficulties, the insufficient European integration, the lack of advances in fiscal and monetary policies and the so-called refugee crisis among others.

This last social crisis is enlightening the debate on some critical issues in the European Union that must be tackled as soon as possible if we desire to continue growing and improving as a community: is the humanitarian aspect more relevant than national economies? Should we be afraid of terrorism to the extent of not allowing refugees crossing our external borders? Is the Schengen Area properly working? Should we prioritise security over free movement of people? Is it justifiable to lose some personal freedom to contribute to a bigger and better security? Is solidarity one of the core pillars of the European Union and should we help other countries with the migratory pressure even if it will be harmful for our country?

Nowadays, it has become impossible to run away from the massive news concerning the situation of asylum seekers arriving to Europe and putting aside those questions previously stated. International Organisations are hesitating whether the European Institutions are addressing the problem suitably and in a humane way to provide an effective solution and the European Union itself seems to be overwhelmed by the increasing pressure triggered by the crisis.

Furthermore, the measures taken by the European Union seem not to have sufficed so far and the most hit countries are claiming to be uncomfortable with this situation and with the European decisions triggering social tensions and riots that, added to the increasing voting share of certain political parties, show a proliferation of extreme right ideologies that are radicalizing the national politics in the Member States and questioning the feasibility of continuing to bet for the joint project of the EU. This increment of extreme-right voters is also starting the debate on the lack of leadership and union in our community, which seems to be heading towards a panorama of nationalisms, separation, conflict...

Finally, this refugee crisis seems to be the spark that has enlightened an unsustainable situation and we consider especially important nowadays to provide the readers and insight into this crisis to make them aware and to properly understand why this is happening, the actual multidisciplinary implications for the European Union and the possible solution that may arise in a near future to manage it.

Why this crisis is so relevant nowadays if asylum is not a new phenomenon in the European Union History?

AIMS OF THE RESEARCH

In this research, we have considered the necessity to understand one of the problems that are compromising currently the stability and well-being of the European Union in depth and it has seemed logical to examine, migration, as one possible trigger of some of the other troubles. This is the reason why we have chosen to comprehend better the migration phenomenon, its implications in society and the current and worrying refugee crisis that Europe is challenging.

We have found it fundamental to start digging into the actual problem to understand how it has happened, how it is being developed, what is the real extent of the crisis, how many people is involved and what are their conditions, what is the European Union doing up to date to manage the crisis, which can be the consequences for the community and what the future looks like.

Furthermore, asylum seeking is not a new phenomenon in the European History, and we want to research why it has become so dangerous and problematic nowadays and why the European Society has started to debate that intensely on this topic currently.

For all the reasons previously explained in the introduction, we strive for gaining a profound knowledge on migration so that we can understand the dangers or benefits of the refugee crisis and the effects that is provoking in the European Society such as economic and social aspects, fear for terrorism, Islamophobia, the increment of terrorism, the raising of extremist right political parties, Euroscepticism, etc.

Moreover, we feel impossible to grab the essence of the refugee crisis

without knowing in depth what migration is, how it has been understood over the centuries, its theories, causes and consequences as well as all the process carried, internationally and in the EU to regulate this issue and to provide the system with fair, proper and sustainable legislative tools and an institutional framework that guarantee the humanitarian conditions, the integration and the movement of the people involved in migration, and an efficient management of the crisis.

By knowing how the legislation articulates, how the agencies work, how these tools contribute to the stability of migrants and countries and what is the functioning of this phenomenon, we will be able to study the asylum crisis objectively and from a studied perspective, which will let us conclude a personal opinion about the feasibility of the measures adopted, the suitability of the process and what are the solutions that we consider to be the most proper to solve the crisis.

METHODOLOGY AND SOURCES

To structure the research in a logical, fluent and coherent way, we will divide the report in two blocks: in the first one we will start analyzing qualitative data on the concept of migration and its classifications, its principal explicative theories, its causes and effects, and the main brakes and drivers that motivate the phenomenon. With this first study we will understand in depth what migrations are about and we will have a solid basis over which we can continue our research.

In the second block we will analyze the three frameworks that we consider relevant for a proper understanding of the phenomenon in the specific case of the European Union such as the historical framework that will deal with an examination of the main migration flows in the EU; the normative framework to know the main legal instruments that regulate migration at a communitarian level: conventions and agreements, treaties and derived law; and the institutional framework that will offer us a perspective on the organizations that surveil for the efficient and humanitarian management of migrations.

Finally, we will progressively and understandably move to a quantitative analysis of the figures showing the situation concerning the refugee crisis and the asylum applications tense problem.

This research has been conducted by following a methodology based on structuralism and bibliographic and documental revision. This method has been developed according to the disposals established by Amador (1998) included in the piece "*Metodología de la investigación*" (Rodríguez Gómez and

Valdeoriola Roquet, 2009); such disposals establish a documental process in three stages:

1. Consult of documents: generally consulting the pieces and documents considered to be the most relevant.
2. Contrast of information: accessing new material that allows to valid the exposed information and solve the doubts arisen during the consult. In the phase of the method, the documentation that, concerning its characteristics or content, might be considered irrelevant.
3. Historical analysis of the problem: observation of the evolution of the knowledge acquired concerning the studied topic.

Taking into account the bibliographic character of the study, we have considered several methods of information research with the aim of having available the suitable information to accomplish the objectives. Such information has been extracted from books, official documents elaborated by the main International Political and Economic Organizations. Documents provided by the databases and bibliography of the European Union, international newspapers, as well as a wide range of legal and political texts. Furthermore, main International Organizations webpages considered of profound interest have been visited too.

When presenting the corresponding figures, we have proceeded to the elaboration of tables and graphs to support the information displayed. This way, we provide visual material that allows understand the situation which the asylum applicants are facing nowadays.

To create the conclusions, we have analyzed the obtained results during the

whole structural and documental research. Such conclusions correspond to a series of “post scientific judges of value” (Fernández Díaz, et al, 1989) developed once the study has been finished. These judges match several personal recommendations that we see ourselves in the position to defend, once we have corroborated all the faithful data gathered.

BLOCK I: MIGRATIONS FORM A GLOBAL PERSPECTIVE

1. INTERNATIONAL MIGRATION PHENOMENON

Migration has been present in our society over its whole history going through periods of aggravation and others of decrement, which have fluctuated to draw the current situation that we are facing in the 21st century.

“Humankind territorial movements have belonged to its own history; aggravated in certain periods, attenuated in others, they have been conditioned by different factors of diverse nature: environmental, demographic, economic, cultural, religious, and sociopolitical. Thus, the creation of Nations, States and Empires, on one hand, and wars on the other have resulted in migrations either volunteer or forced” (Eramis Bueno Sánchez)

Such a controversial and recurrent topic is not weird to have several definitions. Among them we would highlight the following ones:

“By migration, we understand the movements of people whose aim is to change their residence from one place in the origin to another in the destiny, crossing a geographical border which is often considered as a political-administrative division” (Ruiz García, A., 2002) Other definition that can be found is provided by Michael Kernaey and Bernadete Beserra (2002) who define it as: *“a movement that crosses a significant border which is defined and maintained by a certain political regime in such a way that going through it affects the identity of the subject”* Furthermore, Ludmila Borisovna Biriukova (2002) claims that: *“the decision of migration is triggered by the rational calculation in which each subject compare the costs of migrating with its rewards”* This last statement introduces an interesting point of view which will be studied in more depth later in this report, migration as an opportunity cost.

(Sánchez Bueno, 2002)

As can be seen from the numerous definitions of migration, we can withdraw a common pattern, the fact of an individual moving from one place to another changing the residence and the political-administrative territory. However to better understand this concept we must analyze the different types of migration, distinguish the diverse considerations of the people involved depending on the specific sort of this migratory phenomenon and study the theories that have explained migration over the past centuries.

First of all, there are three elements that will allow us to differentiate more precisely which movements may be considered as migrations and which ones may not.

- Space: the movement must be done between substantial geographical delimitations (Cities, provinces, regions and countries)
- Time: the movement must be long-lasting and not sporadic.
- Social: the movement must carry a significant change in the environment, both physical and social.

Following these three aspects, it might not be considered as migrations, the tourism, the business or study travels as well as movements within the same city because there is no significant change geographically speaking.

Furthermore, it must be highlighted that migration is a long and complex phenomenon both in time and space and so comprises different sub processes that we will study next.

1.1. STAGES IN THE MIGRATORY PROCESS

According to Tizón García¹, migration can be divided in different processes:

Preparation: It is commonly wrong to consider that the migration starts with the movement itself since the real beginning of the process actually happens before. The preparation stage implies a collaboration of the family and a reflection about what we have and what they will have if they decide to migrate. In this stage they start being conscious of the problems they are facing in their countries and maybe they are receiving information about the potential opportunities in other countries.

In this period they might also experience a feeling of sadness and resentment with the rest of the people who have had an opportunity in the country where they have not. The future migrant devotes time and energy deciding what he or she is going to take with them to the new residence, which will be the company and what they expect to achieve there.

Migratory act: This stage corresponds to the movement itself from the departure to the arrival in the place of destiny. In this moment the conviction in the return will ease the decision to migrate. The duration of this process depends of the transport used and emotion can play a fundamental role in it if the movement is triggered by some kind of threat.

Settlement: This stage deals with the period between the arrival in the place of destiny and the fulfilment of the minimum necessities. This moment requires changes in the subject owing to the different costumes and habits between the migrant and the society receiving that migrant. The subject does

¹ Tizón García, J. L. (1993) et al. *Migraciones y Salud Mental*. University Promotions and Publications PPU. Barcelona.

not lose its culture but it has to accept the new one although he or she does not still involve completely in it. It is fundamental that this difference is not too high to ease the process of settlement.

If the settlement is not done efficiently and the migrant does not accept the new costumes and culture, some confrontations might happen and the individual development is stopped.

Integration: This is the last step in the migration process. In this moment the subject starts developing an acceptance and interest in the new culture and is able to appreciate the nuances of this new culture that might make him/her feel the culture like his/hers.

Return: This stage is optional and can happen or not depending of several factors. In the moment the migrant returns to the country of origin or starts another migration process from the first stage. (Micolta León, 2005)

Along the process the same migrant changes their denomination since he/she will be considered emigrant in the departure, for the country of origin and immigrant in the arrival, for the country of destiny. Finally the migrant can also be considered a returnee if he or she decides to come back to the country of origin. In summary the migration follows this process:

Figure 1.1 Migration Process divided in stages and the denomination of the migrant

Country of Origin		Country of Destiny			Country of Origin
Preparation	Migratory Act	Settlement	Integration	Return	
<i>Emigrant</i>		<i>Immigrant</i>			<i>Returnee</i>

Source: Own elaboration²

1.2. TYPES OF MIGRATION

Considering important to analyze some of the different types of migration to get a meaningful insight in the topic, we are going to display diverse categories and classifications introduced by Tizón García depending of several aspects.

According to the duration:

- a) *Seasonal*: These are migrations whose subjects move to do some tasks that can be done only in some seasons of the years (agriculture, recollection...)
- b) *Temporary reiterated*: Those migrations in which the workers get their contracts renewed while the company do several tasks.
- c) *Several years*: It is the shared desire between the majorities of migrants. This is why they expect to spend only a few years out of home and the most of the times the migration becomes indefinite.

² Using the information provided by: Micolta León, A. (2005) *Teorías y Conceptos asociados al estudio de las migraciones internacionales*.

- d) *Indefinite*: Migrants leave their countries with the expectancy of coming back only in holidays or sporadic travels.

According to the way of life:

This category consists of the preferences in the way of life depending on the activities realized by the migrants. It is recently common to see the migration mostly from villages to cities.

According to the professional demands and necessities:

- a) *Looking for a steady professional status*: this is the case of migration of workers from the countryside to the industry.
- b) *Because of the professional activity*: Diplomacy, Army, Public Servants...
- c) *Search of an upper development*: intellectual migration in the search of better training and jobs.

According to the age:

- a) *Children*: Children usually migrate along with their parents either before or simultaneously. There some cases or cultures in which this is not exactly true as in some African countries where the children travel with other member of the family. This is a sensitive migration since the children are going to spend some time without their parents and this can have an influence in the settlement and integration in the country of destiny owing to the affective lack.
- b) *Adults*: they are in most cases the responsible in the migration process and those who make the decisions and take care of the company
- c) *Elderly people*: these people might be looking for a better welfare after

their retirement or they might see themselves forced to move because their places are remaining obsolete. They might also want to migrate to meet their children who had to migrate some years before. This kind of migration has attached a strong set of emotional difficulties.

According to the degree of freedom:

- a) *Volunteer*: This sort of migration is intensely related to the economic migration
- b) *Forced*: which is subdivided in:
 - i. *Slaves*
 - ii. *Deported*
 - iii. *Refugees*: this last category will play a fundamental role in the report due to the migration crisis that Europe is facing nowadays with the massive flows of refugees.

Cristina Blanco³ also gives us other elements to consider when it comes to differentiate the sorts of migration:

According to geography:

- a) *National*
- b) *International*: This migration happens when an individual decides to leave its country to reside in another one. For this purpose it is fundamental that not only does the origin country leave the person emigrate but also it is necessary that the country of destiny allows the immigrant to stay. When all the conditions are fulfilled the migration is named *legal*. If the migrant stays even not accomplishing the legal

³ Blanco, C. (2000). *Las migraciones contemporáneas*. Social Sciences. Editorial Alianza. Madrid.

procedure the migration is called *illegal*. At this point it is important to remark that legal or illegal are terms related to migration but not to the migrant and therefore, it is wrong to say illegal immigrant and it would be more appropriate to call it undocumented or irregular.

According to decision subjects:

- a) *Spontaneous*: this implies a volunteer intention of the migrant to change the residence
- b) *Directed*: this does not lose the concept of volunteer but it is directed by a specialized agency.
- c) *Forced*: The migrant does not decide the movement and, in many cases, neither the country.

According to the causes of migration:

- a) *Ecological*: this category is due to natural catastrophes
- b) *Political*: this migration is triggered by national intolerance, religious or political disagreements or by highly conflictive social situations. Here it is common to see the biggest number of refugees, stateless people...
- c) *Economic*: In this case the decision is based on economic factors and it seems to be volunteered although there are some contrary opinions. The migrant leaves the country to look for a better economic situation or to avoid poverty and death.

In summary we can find diverse sorts of migration depending on numerous aspects that configure this controversial concept which will be the focus of our study. In the next figure we can better and visually observe the types of migration previously explained.

Figure 1.2 Classification of types of migration

Duration	Seasonal Temporary reiterated Several years Indefinite	
Professional demands and necessities	Looking for a steady professional status Because of the professional activity Search of an upper development	
Age	Children Adults Elderly people	
Degree of freedom	Volunteer Forced	Slaves Deported Refugees
Geography	National International	
Decision subjects	Spontaneous Directed Forced	
Causes of migration	Environmental Political Economic	

Source: Own elaboration⁴

1.3. THEORIES EXPLAINING MIGRATION

There have been many theories during the past centuries to try to understand migration in depth and by knowing them we might comprehend better why migration happens nowadays, why it represents such a severe crisis for Europe and how it might affect our society.

The first branch of theories comes from the classic theories developed in the

⁴ Using the information provided by: Micolta León, A. (2005) *Teorías y Conceptos asociados al estudio de las migraciones internacionales*.

United States, which has been the biggest country of immigrants in the world.

1.3.1. American Classic School of the Assimilation

According to Gordon⁵, the American assimilation to the culture and the way of life, also called Anglo-conformity has been the most relevant theory in the US History from the colonialism to the second half of the 20th century.

The Founding fathers of the United States showed some concern with the effects triggered by a massive immigration in the American Institutions which were built by two fundamental achievements: democracy and republicanism. Notwithstanding, the incoming Europeans were not willing to adapt their languages, culture and values to the new country, which compromised the pillars of the US.

On the other hand, along the 19th century the advantages of the massive immigration started to be observed since it was useful to increase the population in certain States and to contribute with workforce. This is why it was that important that the immigrants adapt themselves to the new habits and culture of the US.

We can see this feeling in a letter written by the Secretary of State John Quincy Adams in 1818: *“They (immigrants to America) come to a life of independence, but to a life of labor and, if they cannot accommodate themselves to the character, moral political and physical, of this country, with all its compensating balance of good and evil, the Atlantic is always open to them to return to the land of their nativity and their fathers. To one thing they must make*

⁵ Gordon, M. (1978). *Human Nature, Class and Ethnicity*. New York. Oxford University Press.

up their minds, or they will be disappointed in every expectation of happiness as Americans. They must cast off the European skin, never to resume it. They must look forward to their posterity rather than backward to their ancestors; they must be sure that whatever their own feelings may be, those of their children will cling to the prejudice of this country”

To sum up, the Anglo-conformity consists of accommodating to and assimilating the *moral, political, and physical character* of the country (US), forgetting about their past (Europe) and “*If they don’t like it here, they can go back where they come from*” John Quincy Adams, 1818.

During the next century, R. Park and E. Burgess⁶ came up with the idea that the “racial relations cycle” was composed by four stages: *contacts, competition, accommodation and assimilation*. Due to the industrialization people would be moving to the villages meeting each other and competing for a job, however, they would be gradually shifting into accommodating one another to eventually assimilating the others by erasing the racial and ethnical disputes. They would get used to the different cultural systems and they would start acquiring feelings, remembers and attitudes of other groups, causing a process of fusion. (Bajo, 2007)

1.3.2. The Melting Pot (Mixture of Races)

This theory is considered for some people as a version of the Assimilation School (Lambert and Taylor⁷) and as an alternative version for others (Gordon).

⁶ Park, R and Burgess, E (1921). *Introduction to the Science of Society*. University of Chicago Press. p.735

⁷ Lambert, W. and Taylor, D (1990). *Coping with Cultural and Racial Diversity in Urban America*. New York. Praeger. p. 26.

This last author⁸ mentions a testimony to better understand what this theory deals with.

J. Hector St. John Crèvecoeur, American writer from French origin, wonders in his book,⁹ what is meant to be an American: *“He is either a European, or the descendent of a European, hence that strange mixture blood, which you will find in no other country. I can point out to you a family whose grandfather was an Englishman, whose wife was Dutch, whose son married a French woman, and whose present four sons have now four wives of different nations. [...] He becomes an American by being received in the broad lap of our great Alma Mater. Here individuals of all nations are melted into a new race of men, whose labors and posterity will one day cause great changes in the world”*

This theory was reflected in the policy of the first three quarters of the 19th century where the widely spread belief of every immigrant being absorbed and contributing to a *national character* made US “doors” open to everybody. (Bajo, 2007)

1.3.3. Cultural Pluralism or Multiculturalism

A few years after the success of the Melting Pot theory, Horace Kallen¹⁰ criticizes the previous theories (Anglo-conformity and Melting Pot) refuting them by claiming that the diverse ethnic groups tend to settle down each in an

⁸ Gordon, M. (1978). *Human Nature, Class and Ethnicity*. New York. Oxford University Press.

⁹ Crèvecoeur, J (1782). *Letters from an American Farmer*. London.

¹⁰ Kallen, H (1915). *Democracy versus the Melting Pot*. The Nation Newspaper.

specific region, to preserve their language, their religion and their culture. On the other hand they learn English as the language for general communication and they participate in the country social and economic life. Therefore, America cannot be considered as a Melting Pot but as “cooperation among different cultures”.

Furthermore, this theory yields that the assimilation is not something due to happen always because there is no reason to believe that the different racial groups want to assimilate one another. Therefore the American culture, the national character could be understood as a result of the already existing culture and the contributions of the new incoming cultures. (Bajo, 2007)

M. Gordon tries to establish a connection between the two theories distinguishing diverse stages in the assimilation process as can be seen in the following table:

Figure 1.3: The Assimilation Variables

Subprocess or condition	Type or stage of assimilation	Special term
Cultural or behavioral assimilation	Cultural or behavioral assimilation	Acculturation
Large-scale entrance into cliques, clubs and institutions of host society, on primary group level	Structural assimilation	None
Large-scale intermarriage	Marital assimilation	Amalgamation
Development of sense of peoplehood based exclusively on host society	Identificational assimilation	None
Absence of prejudice	Attitude receptional assimilation	None
Absence of discrimination	Behavioral receptional assimilation	None
Absence of value and power conflict	Civic assimilation	None

Source: Gordon, M. (1978) Human Nature, Class and Ethnicity.

1.3.4 Classic School

We can already check that the classic authors spoke about migration in the following aspects:

As a necessary tie to develop production through free mobility of factors (Smith)

As the exercise of the individual freedoms (Smith)

Motivation for wage differences (Smith, Marx, Malthus)

Overpopulation (Malthus)

Substitution of economic activities (Marx)

Pursuit of well-being (Smith, Malthus)

Therefore, Smith (1958) and Malthus (1951) opposed to governments imposing barriers to international migration since migrants are only in the purchase of well-being. Malthus defended migration as a short term solution to reduce overpopulation although it cannot tackle the problem in the long term.

On the other hand, Marx (1972) was not convinced about free market so he yielded that migration was caused mainly by capital accumulation, land property concentration, and economic and political dependency under an external power.

John Stuart Mill (1978) saw migration as an opportunity to spread the colonialism and promoted an intervention by the State to control migration flows' destiny by founding them. (Gómez Walteros, 2001)¹¹

1.3.5 Austrian School

In this school Mises (2004) and Hayek (1997) claimed that migration is completely linked to liberal principles.

¹¹ Gómez Walteros, J.A. (2001). *La migración Internacional: Teorías y Enfoques, una mirada actual*. Semestre Económico. Vol. 13, N° 26 pg. 81-99.

Hayek encourages tolerance with foreigners, defends diversity since it contributes to productivity, and searches the removal of borders.

Julian (1981, 1989) advises that migration cannot be forbidden in any case because although it can be harmful in the short term, it will doubtlessly be beneficial in the long term. (Gómez Walteros, 2001)

1.3.6 Ravenstein Approach

Ravenstein (1889) is the first author that gives an explanation on migration providing theorist arguments and practical approach:

There is an inverse relation between migration and distance. Moreover, long-distance migrants prefer the places where industrial and commercial centers are located.

Migration by stages

Rural habitants are pruner to migrate that those living in bigger cities.

Migration and quantity of migrants grow insofar the communications and technologies improve.

Economic migration as the main type of migration. (Gómez Walteros, 2001)

1.3.7 Neoclassic Theory

This theory played a fundamental role in the study of migrations in the second half of the 20th century. It applies its principles to the job factors given two assumptions:

Human is sedentary by nature and by economic reasons

Human acts reasonably when making the decision of migrate to maximize the advantages of the process

International Migration responds to the individual decisions about cost-benefit to maximize the income, i.e. wage difference between the country of origin and the country of destiny. Labor flow move from countries with low wages to those with high wages.

As a result, migration triggers a pressure to decrease the wages in the countries of destiny and a pressure to increase the wages in the country of origin until the balance is reached. Therefore, the migration rate rises when the wage disparity grows¹².(Micolta León, 2005)

1.3.8 Push-pull factors Theory

This theory is derived from the Neoclassic Theory and represents the biggest impact within the scientific community. This theory is based on the

¹² Massey, D. (1998). *Worlds in motion, understanding International Migration and the End of the Millennium*. Clarendon Press. Oxford.

existence of different factors that provoke migration and leaving the country of origin (push) and those that attract migrants to the other countries (pull) creating a dynamics of expulsion (push) and attraction (pull).

Among the push factors we can find the following ones: high demographic pressure, lack of access to the land, low wages, low quality of life, lack of political freedoms, etc. On the other hand, among the pull factors we can remark the contrary ones. People make a huge investment represented by the travel costs and the cost derived from staying in the country of destiny while they look for a job, learn the new language and overcome the emotional pain of leaving one's country.

Given the instrumental reasoning of freely choose among the best alternative, the migrant evaluate the costs and benefits and will chose the most profitable option. From this point of view migrations are considered functional since they contribute to the system balance and profitable for both the country and the migrant.

People make a monetary investment hoping to make a return, choose the country where they believe they can find a job and this way, they maximize benefits. As a result, the job offer decreases in the country of origin and therefore, the wages rise; and on the other hand, the job offer grows in the country of destiny, decreasing the wages. This causes a balance between the two countries.

This theory has been the focus of critics since it defends that the migrants are the poorest people of the least developed countries when reality shows that migrants are mostly middle class. Furthermore, this model does not explain why

migrants choose some countries and not others, and does not count on migrations being a social movement. (Micolta León, 2005)

1.3.9 Theories with structural and historical perspective

To continue with the explanation of the causes of migration, at the end of the sixties' of the past century, some theories were developed in response to the previous models. In the basis of these models it is located the international division of work resulting from an uneven exchange regimen among country economies according to the place in the world¹³. These theories are framed from the perspective that analyzes reality from conflict, fight and inequality¹⁴.

1.3.9.1 Fragmented Labor Market Theory

According to this model, led by Michael Piore, migration is encouraged by demand in modern and developed societies. In current capitalism, labor market is unequal and is composed by two sectors: Primary sector which is featured by stability, high wages, enormous benefits, and good labor conditions; and Secondary sector which is characterized by the opposite. Developed societies lack workforce willing to participate in se Secondary Sector and therefore, the employers have to hire immigrants to occupy this positions rejected by nationals.

¹³ Criado, M.J (2001). *La línea quebrada. Historias de vida de migrantes*. Consejo Económico y Social. Colección Estudios Nº 113.

¹⁴ Laraña, E (1993). *Modelos de Interpretación y cuestiones de género en el estudio de las migraciones españolas*. Revista política y Sociedad Nº 12 p. 121-137

Such immigrant workforce is based on four structural characteristics in the modern societies:

- a) *Structural inflation*: Employers see in immigrants an opportunity of having the work done for cheaper wages
- b) *Motivational Problems*: Nationals not only care about salary but also about motivation based mainly in a good social status. However, immigrants are driven by different motivations and often only seek for a wage.
- c) *Economic Dualism*: Whereas capital is a fix factor in production, work is a variable one whose costs of underperformance (unemployment) lies on the own worker. In adverse situations, employers implement measures to optimize economic resources before labor ones. They will deploy measures to optimize the capital and workforce in both sectors, nevertheless the secondary one is which suffer most.
- d) *Workforce Demography*

These factors are also influenced by the pressure of woman in the labor market, increment in divorces, and decrement in the number of births. (Micolta León, 2005)

1.3.9.2 Marxist theory of capitalist accumulation

Job duality weakens the worker class by dividing it by two subclasses: natives and foreigners, which benefits the world capitalist system.

Therefore, migrations are the result of an uneven development between the central and peripheral economies. This way, international migrations are triggered by both the unequal development of the advanced capitalist economy,

and its imperialist exploitation of the Third World Countries. In both cases, the Industrial Revolution has erased the traditional production systems and has boosted a demographic explosion that has decreased mortality. Hence, to better understand migrations it is necessary to examine the causes of underdevelopment of the poorest countries, understanding that development and underdevelopment are two factors in the relation between inequality and subordination.

Migration is considered to be another raw material and therefore, these are seen as flows of exports from the less developed countries to the central ones. This is why; migration is not conditioned by individual decisions but by the structural differences in the exploitation relations imposed by the outside. (Micolta León, 2005)

1.3.9.3 World System Theory

This theory defends that migration comes straight from the market economy globalization. The capitalist expansion from Europe, US, Japan and Oceania, and the penetration of market relations in the developed world and the old communist world, have led to the breakdown and to the transformation of non-capitalist social and economic organization patterns. In this process great quantities of people are moved from their safe ways of life, which causes a potential migrant citizenship.

This market economy fosters enterprise to look for cheaper workforce which comes generally from the poorest countries, making a movement from the peripheral countries to the central ones. This, added to the improvements in transport and communications, has soared migration, leaving the Third World even more weak and poor.

The biggest aspect of this theory is the correlation between migration and international inequality through the positive consequences of migration in the reception country and the negative ones for the origin country. However, it has been criticized because it only counts on the economic migration and forgets about the other types of migration considered nowadays. (Micolta León, 2005)

1.3.10 Theories about the perpetuation of migration movements

We have analyzed different types of migration based on the causes that make migration possible or that foster this international movement. In this section we will examine another bunch of models focused on the duration of migration under its social and collective dimension. To comprehend this group of ideologies we are going to focus on two perspectives:

To associate the duration and end of migration to the migratory project itself: These theories study and enlighten the everlasting and temporary duration of the movement. Here we find the American and European theories. The American ones consider migration as a fundamental experience in the migrants' lives and thus, return is a residual part of the process since migration is thought to be forever and returnees are only those who fail in the process. The European ones consider migration as a movement to improve the economic and social conditions which is a transitory element in migrants' lives. For these thinkers return is a success.

- a) *To understand migration as a flexible and dynamic process where new factor can appear changing the original migrants' expectations:* These theories defend that movements can be generated by several reasons that

might be different along the time and space. This last group is subdivided in diverse schools of thinking that we proceed to describe¹⁵. (Micolta León, 2005)

1.3.10.1 Social Network Theory.

This model is based on the personal relations of migration in both the country of origin and the country of destiny. These relationships can influence on the decisions of migrate or return. The existence of ties (family, friends, love...) can minimize the costs raise the benefits and decrease the risks of moving. In the receiving country the migrant establishes new relationships that will be valued in comparison to those in origin to make the decisions. Having a spouse and children in the receiving society might be a factor that determines the movement to be definitive and having a family in origin might tip the balance to return home¹⁶. (Micolta León, 2005)

1.3.10.2 Institutional Theory

It highlights the role of institutions either public or private devoted to offer support to immigrants. Humanitarian associations are also established in developed countries to fight for the rights of migrant. The bigger the number of migrant is, the bigger the number of these associations and institutions will be. The existence of those will preserve the flow of migration¹⁷. (Micolta León,

¹⁵ Blanco, C. (2000) *Las migraciones contemporáneas*. Social Sciences. Editorial Alianza. Madrid.

¹⁶ Portes, A and Bóroccz, J. (1998). *Migración Contemporánea. Perspectivas teóricas sobre sus determinantes y sus modalidades de incorporación*. Icaria. Fundación Hogar del Empleado p.43-74

¹⁷ Massey, D. (1998). *Worlds in motion. Understanding International Migration and the End of the Millennium*, Clarendon Press. Oxford

2005)

1.3.10.3 Cumulative Causation Theory

This model yields that the international migration tends to be preserved in time without counting on the initial causing conditions.

This perspective interprets migration as a dynamic accumulation of processes and conditions that might be changing the divers of migration along the time. These processes might be formulated as follows:

- a) Social, economic and cultural changes produced by international migration award the movement with a power that ceases every attempt to control and regulate it.
- b) Situations of unemployment and loss of jobs in the receiving countries make it impossible to find national workforce for some kinds of jobs, which incite the society to hire more immigrants.
- c) The existence of big collective of immigrant working in certain positions labels those positions as immigrant work and it avoids nationals working there.

This theory claims that migration acquires a steadiness and structure that generates migratory systems clearly identifiable. (Micolta León, 2005)

THEORY	MAIN EXPLANATORY CAUSE	OBJECTIVE	APPROACH	ANALYSIS UNIT	MIGRATION CONCEPT	DISADVANTAGES
Individualist Perspective	Capability of individuals to analyse the costs-benefits of migration	Maximize the well-being	Micro	The Individual	Migration is the reflect of the social and economic differences among countries. Migrations are functional since they contribute to the system balance, both migrants and countries.	Migrations are unidirectional It does not explain the profound causes It only explains migration in developed countries It assumes the split of land, work and capital It does not count on the barriers to free movement among countries It does not explain the focalization of streams
Historical and Structural Perspective	Systemic or Structural Character	Take the most of the bonds between origin country and destiny country	Macro (previous bonds between countries) Micro (Migration Networks)	The Migratory Stream itself	Migrations belong to the historic development and are the result of changes in production systems and social relations.	It does not allow to elaborate general rules Excessive emphasis on economic variables and market power It does not explain the differences between countries It does not explain the steadiness of the flows although the comparative advantages vary It does not explain why it does not affect equally all country zones It does not explain the flow orientation

Integration Approach	Historic, structural, ideological and cultural factors Group and domestic Networks	Multiple and influenced by the existence and dynamics of the Migration Networks	Macro (previous bonds between countries) Micro (Migration Networks)	Every stage of the process considered individually	Migration is the result of the dynamics developed from the previous bonds This explain why not every poor country generates flows and the differences in their orientation Poverty ceases to be the explanatory cause. Foostering the economy of the origin countries does not reduce the flow. Labor Migration is a cumulative process of bueldding networks.	Excessively complex Less generalizing
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1.4. CAUSES AND EFFECTS OF MIGRATION

1.4.1. Causes of Migration

When explaining the reasons that provoke the migration flows we have to make reference to a bunch of variables that are conditioned by migration itself. However, we cannot forget about the context in which the migrations are performed and the factors that incite or minimize the migration.

1.4.1.1. Context

The context in which migration occurs varies along the time and thus, is why migration is considered as an historic process. Furthermore, that context also differs among regions; it is not the same the migration in US, Europe, Africa etc. Those differences might be caused by culture (historic tradition, language proximity, geography, trade relations, existence of receiving networks...); politics (democratic regimes, internal conflicts, respect of human rights...); society (attitude towards migration, support regulation to immigrants...); and economy (labor market situation, financial situation...).

Notwithstanding, sometimes those factors are not enough to explain why migration happens in some places and does not in others. Therefore, we can talk about three further features explaining migration:

- Risk: It seems undeniable that every movement has a risk implicitly attached that might be minimized by the advances in transport, support networks etc. People which can be defined as risk averse will not run such risk and will not probably migrate and vice versa.
- Revel attitude: People who like trying new challenges and who reject the status quo are prone to migrate and vice versa.

- Randomness: The desire to jump into the luck might also influence the fact of migrating.

All these elements together are synthesized into categories causing migrations in the following figure:

Figure 1.5: Interdisciplinary Migration Causes

DISCIPLINE	PERSPECTIVE
Demography	Different demographic rhythms: birth, death rates...
Law	Migration regulation, citizenship, family regrouping
Economy	Differences in incomes, employment, social services, public services
Ethnology	Contacts with other cultures, evolution of society...
Geography	Geographic proximity, communication advances
History	Previous political and trade ties
Politics	War conflicts, differences in politics
Psicology	Risk, reveal attitude and randomness
Sociology	A way to change the status, a family strategy, as a result of internacionalization process

Source: González Rabanal, N; Ortega, P. and González, C (2003) *El Entorno Económico Actual*. p.53

1.4.1.2. Offer Factors

These factors act by configuring the desire to leave the country of origin:

- a) *Demographic variables*: When there are high birth rates and low mortality rates because of the medical improvements, the demographic pressure increases and both the environment can be damaged and national

employment is not able to provide with jobs to all population. This might be added to a lack of social services and lack of economic support for unemployed people.

- b) *Low development of democratic institutions*: A low level of economic resources can result in dictatorships not respecting human rights and therefore, it can lead to social unsteadiness, armed conflicts, ethnic and religious fights etc. Hence, all homeless and poor people will be incited to leave their countries to look for a promising future.
- c) *Environmental disasters*: It is undeniable that every country can suffer from these catastrophes. Nevertheless, those countries, with high unemployment and poor population with weak health and low organizational capabilities are pruned to be more damaged. More people will turn out to be poor and migrants will have to leave their countries to survive.
- d) *Cultural and Social factors*: differences in culture among societies, e.g. disrespect for women, might be the latest reason to migrate.

1.4.1.3. Attraction or Demand Factors

These factors act as pull conditions to attract immigrants and are the contrary of the offer factors:

- a) *Demographic Variables*: In those societies with older population, migration may be needed to preserve the welfare systems that are at risk because of the retirements and low active population. Therefore, immigration is encouraged and immigrants are integrated in society to find a job.
- b) *The need to occupy certain job positions*: There are certain jobs with a

negative connotation that make nationals reluctant to occupy. Thus, these positions are assigned to immigrants, which raises even more the negative label and provoke that they are only developed by immigrants.

c) *Better life conditions*

d) *Cultural and geographical proximity*: When deciding either migrate or where to migrate, not only geographical but also cultural proximity will help migrants make the decision.

e) *Regulation and support networks*: The degree of help and support to immigrants will condition the decision of migrating to a determined region.

All these offer and demand aspects can be added to other factors that might incite or demotivate the decision of the emigrant. We can see a summary of those factors in the following figures: (González Rabanal, 2003)

Figure 1.6: Brakes to emigrate

INSTITUTIONAL	ECONOMIC	PSYCOLOGICAL	SOCIAL
Non permissive regulation Police checks	Direct costs (travel, movement...) Renounce to some incomes, low but fixed, in exchange of others, bigger but likely.	Fear to the unknown Risk Revel Attitude Randomness	Breakup with family, social, cultural bonds Social rejection in the country of origin Difficultes to integration in the country of destiny

Source: González Rabanal, N; Ortega, P. and González, C (2003). *El Entorno Económico Actual*. p.55

Figure 1.7: Incentives to emigrate

ECONOMIC	SOCIAL AND POLITICAL	CULTURAL	OTHERS
Previous trade relations	Support Networks	Cultural and Language proximity	Geographic proximity
Bigger employment likelihood in the country of destiny	Developped Welfare system in the country of destiny		More globalized country
Better quality of life in the country of destiny	Permissive regulation towards immigration		More information
Demographic pressure in the country of origine	Ease to family regrouping		Better communication
Old population in the country of destiny	Democracy in the country of destiny		Natural disasters
Lack of potential employment in the country of origin	Dictatorships in the country of origin		Environmental disasters
	Political, Ethnic, Religious fights in the country of origin		
	Lack of human rights respect in the country of origin		

Source: González Rabanal, N; Ortega, P. and Gonzalez, C (2003). El Entorno Económico

Actual. p.56

1.4.2. Effects of Migration

Once we have analyzed the potential causes of this phenomenon, we must proceed now to analyze the possible effects that migration might have. And we will be doing so, as every complex issue by examining the consequences on the actives agents (country of origin, country of destiny, and the migrants themselves).

From an interdisciplinary perspective we can observe the following effects:

Figure 1.8: Effects of Migration

DISCIPLINE	PERSPECTIVE
DEMOGRAPHY	Population getting younger or older Birth Rates Mortality Rates Genre Distribution Fertility levels
LAW	Regulation on Entry Conditions Effects in terms of civil and political rights (residence, nationality, right to vote...) Guarantee of the exercise of migrants rights in the Labor Market (Job offer, geographic mobility, efficient resources allocation, wage level, GDP, Economic Integration,
ECONOMY	
ETHNOLOGY	Migration as a survival strategy Multiculturalism
GEOGRAPHY	New spatial relations New population zones with specific problems
HISTORY	Reinforcement of historical bonds
POLITICS	Migration and citizenships The need of revising the concept of State Migrants Integration
PSICOLOGY	Social Uprooting Loss of identity Change in roles Unstructuring
SOCIOLOGY	Change in the role of the social groups Integration or exculsion Crime and marginalization

Source: González Rabanal, N; Ortega, P. and González, C (2003). *El Entorno Económico Actual*.

p.57

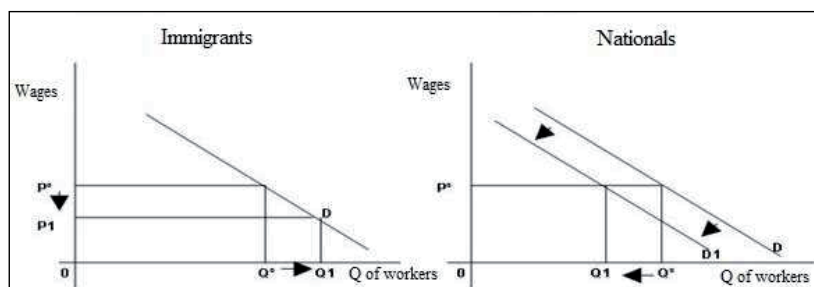
We are going to explain further the economic effects from different perspectives: Macroeconomic effects (affecting on the total economy) and Microeconomic effects (comparing the effects of the migrants to the national population); and the comparison between the effects on the country of origin and the country of destiny.

1.4.2.1. Macroeconomic Effects

The arrival of immigrants willing to work leads to an increment in the job offer, and subsequently, to a decrement in wages that can be translated into a raise in employment. Notwithstanding, both effects depend on other factors as the existence of a minimum wage level in the country, the tightness of the regulation in terms of allowing the country to pay wages under a certain level, and how substitutive or complementary the foreign workforce is in comparison to the national one.

If the immigrant workers are substitutive of the national ones, while the immigrants offer raises, the nationals demand decreases triggering a fall in wages and an increment in unemployment.

Graph 1.1: Substitutive workforce



Source: Own elaboration¹⁸

On the other hand if they are complementary to each other, while the

¹⁸ Using the information provided in: González Rabanal, N; Ortega, P. and González Rabanal, C. (2003). *El Entorno Económico Actual*. p.58

immigrants offer increases, the nationals demand and their wages grow.

Therefore, the degree of expulsion of the national workforce will depend on the degree of complementarity or substitution in relation to the immigrants' one. However, adjusts in labor markets, due to the work mobility, are likely to make the resources allocation more efficient, contributing to minimize the economic differences between countries.

1.4.2.2. Effects on the country of origin

Emigration is considered sometimes as a good incentive by some countries which even encourage this practice, such as Turkey, Pakistan, India, Cuba....

Emigration constitutes a relief to erase certain tensions owing to an explosive demography, to the labor market conditions (unable to absorber all the job offer), to the conflicts provoked by non-democratic political regimens...

Furthermore, this could also supply the country with resources through the "emigrants' shipments" representing, in some cases, a bigger income for the country than the exports themselves. These shipments not only are an advantage for the country but also for the family level improving their consumption and their capital or allowing them to set up new businesses. Thus, the final demand of goods and services is likely to increase and so do the employment and economy.

Assuming that the emigrant comes back to his or her country, this fact will improve also the productivity of the country because the emigrant will have obtained more qualifications in the country of destiny.

Nonetheless, there are negative effects as well. The population will tend to be older since the emigrants are usually the youngest people and the birth rates will decrease. Moreover, the emigrants are more likely to be the best prepared ones and only by returning the country will not be damaged by the “brains scape”.

The emigrants’ shipments are favorable for the country of origin but they can produce a calling effect that makes everyone desire to migrate if they do not engage in economic activity in the own country.

Finally, the contact with other cultures might affect families and some changes in the roles may be happening causing a social shift.

1.4.2.3. Effects on the country of destiny

These effects will depend on the immigrants’ characteristics, the reason for migration, the duration, the size of the country of destiny, the percentage of the immigrants out of the total population...

In the labor market we can appreciate that immigration can fill certain positions in the productive sector, can compete with the national workers for some jobs and vacancies, and can contribute to the decrement of wages and the damage of labor conditions.

Notwithstanding, immigration is likely to create business in the local community since immigrants might integrate and open them and contribute to create wealth. It is undeniable that with their contributions (Social Security, taxes...) there can be an increment in the public expense (education, health,

retirements...), which can benefit immigrants if the government is generous and solidary.

“Dumping social” - i.e. worsening the labor conditions - is another potential consequence since immigrants are more willing to accept poorer conditions than the nationals.

Moreover, the youth of the immigrants might increase the birth rate in the receiving country lowering the average age of its society and enriching the culture of the country, although this last effect might be contrary as well and might cause cultural shocks, racism, lack of integration. (González Rabanal, C, 2003)

Figure 1.9: Comparison of migration

COUNTRY OF DESTINY	COUNTRY OF ORIGIN
<i>Employment:</i> Fill vacancies in the labor market <i>Complete/Compete with</i>	Relief to economic, demographic, political and social problems
<i>Wages and Income:</i> Redistribute incomes Reduce the salaries of the national workforce	Better Payment Balance although it can lead to dependency
<i>Labor Market:</i> More flexibility Worse conditions (Social Dumping)	Older population
<i>Public Expense:</i> Some increments (healthcare, education, accommodation...)	Less technological innovation
<i>Public Income:</i> More social contributions More taxation pressure	Worse workforce supply
<i>Economy:</i> Raise expense Raise investment Raise in technologic	<i>Degree of family cohesion:</i> Dislocation among its members Change in the role of its members
Younger population	Returnees let the country take the most of the workforce without training and they become in the engine of social changes
Ease multiculturalism	

Source: González Rabanal, N; Ortega, P. and González, C. (2003). *El Entorno Económico Actual*. p.57

BLOCK II: MIGRATIONS FROM THE EUROPEAN UNION VIEW

2. MIGRATION FLOWS IN THE EUROPEAN UNION: HISTORICAL FRAMEWORK

“Those who do not know their History are condemned to repeat it”
(Napoleon Bonaparte).

The European Union has experienced different peaks of massive migrant's influxes throughout its History. Many of them have overwhelmed the capacities of the EU to manage those crises and to maximize the positive impact of immigration in the communitarian society. The underlying historical contexts of those mass movements have been very diverse but their reasons are cyclical and repeated all along the History.

2.1. COLONIZATION MIGRATIONS AND MIGRATIONS IN TIMES OF WAR

Up to the 18th century, the most massive influxes of migrants coming in and out Europe are derived from the colonization and the conquests of territories, although we can talk also of peaceful movements such as the agricultural colonization's fostered by European Kingdoms in Prussia, Hungary or Siberia to occupy deserted areas.

One of the biggest waves of migrants of this stage concerning the volume of moving people are the one performed by Spanish and Portuguese citizens that travelled from Europe to America, occupying the colonies of South America. In the meanwhile, in the countryside the development of agriculture technology made it unnecessary to have workforce there and it produced a movement to the urban nucleus which has represented over 60 million of

migrants in the past 200 years.

Between 1850 and 1940 a second wave of migrants from Europe to America happened causing the biggest migrant movement in history; 55 million Europeans left their countries (Great Britain, Italy, Germany, Spain) to live in USA, Argentina, Canada, Brazil and Cuba. This was triggered by the conflicts that covered all Europe. This flux of people resulted in the exploitation of American natural resources, the open of new markets for European products, empowered industrialization...

In these years, there were also movements within the European continent. In 1851, due to the Industrial Revolution, the 9% of the British population was Irish. In 1890, over half of Italian emigrants establish themselves in France and Germany. This last country, Germany also received immigrants from Eastern Europe. (University of Barcelona) (Castelló Roselló V., s/f)

During the Second World War, between 25 and 30 million people were moved in Europe, mainly in Germany and the Soviet Union. Furthermore, before the construction of the Berlin Wall in 1961, around 4 million German refugees went from the Democratic Republic to the Federal Republic.

It is important to remark that in the 80's the open of the Polish and Rumanian economies plus the fall of the berlin Wall made the migration be five times bigger in 1989 than in 1985 even being bigger than a million people annually until 1993. Furthermore, in the 90's the fall of the Soviet Block also contributed to increase the number of movements.

Moreover, at the end of the 20th century, the Balkan Conflict returned the volume of refugees in Europe to the times of the Second World War. Since 1991, ethnic problems have caused the movement of 5 million people, of which

a 40% no longer lives in the former Yugoslavia. (University of Barcelona) (Castelló Roselló V.)

2.2. EVOLUTION OF IMMIGRATION IN THE EUROPEAN UNION BETWEEN 1980 AND 2000

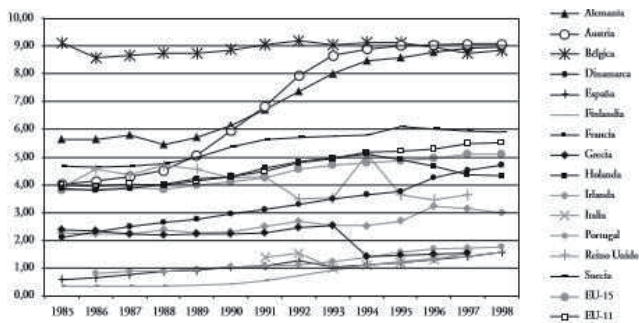
Concerning data from EUROSTAT, at the beginning of the 80's lived in the EU-15 13 million immigrants from both another Member State and other non-communitarian countries, whereas at the end of 1998 the number had raised to reach 19 million which represented the 5,1% of the communitarian population.

This increment was due mainly to processes of family reunification and to asylum applications, leaving the socio-economic factors behind. Nevertheless, this global situation differs depending on the country.

Germany is the country that counts on the highest number of immigrants with 7 million followed by France and United Kingdom with 3.5 and 2.1 million respectively. We can observe in the table 5.1 that the tendency in the United Kingdom decreases in the 90's whereas it increases in France. In the rest of the countries the presence is much more inferior. (See Table 5.1)

Nonetheless, if we compare the total number of immigrants with the total population of the country we can observe that the weight of immigration is never higher than 10%, being the UE-15 average 5.1%. Moreover, it is not weird that the countries with higher percentage of weight are not the same of those with the higher number of immigrants because the size of the countries is not equal.

Graph 2.1 Weight of the total immigrant population out of the total population of the EU Countries (1985 – 1998)



Source: Areskurrinaga Mirandona E. (2012) *La evolución de los flujos migratorios hacia la Unión Europea en las dos últimas décadas y su impacto en el mercado de trabajo*. P.45

This situation has been possible thanks to the flows of immigrants produced since the 80's that peak in the years 1992/3, where the European policies limited and started to regulate strictly those flows of immigration

en miles	EU-15	EU-11	Alemania	Austria	Bélgica	Dinamarca	España	Finlandia	Francia	Grecia	Holanda	Irlanda	Italia	Luxemburgo	Portugal	Reino U.	Suecia
1985	13.600,0	11.100,0	4.363,2	304,4	897,6	107,7	226,0	16,3	0,0	234,1	538,8	79,8	0,0	0,0	0,0	2.188,0	390,6
1986	13.700,0	11.000,0	4.378,5	314,9	846,5	116,9	242,0	16,5	0,0	233,1	532,6	78,8	0,0	0,0	79,6	2.547,0	388,6
1987	14.100,0	11.300,0	4.512,3	326,2	853,2	128,3	293,2	16,6	0,0	220,1	568,1	79,4	0,0	100,3	87,0	2.456,0	390,9
1988	13.800,0	11.200,0	4.240,6	344,0	862,5	136,2	334,9	17,7	0,0	217,8	591,8	83,6	0,0	102,8	89,8	2.642,0	400,9
1989	14.400,0	11.600,0	4.489,1	387,2	868,8	142,0	360,0	18,7	0,0	222,6	623,7	79,2	0,0	105,7	94,5	2.568,0	421,0
1990	14.900,0	12.100,0	4.845,8	456,1	880,8	150,6	398,2	21,1	3.596,6	226,1	641,9	80,8	0,0	108,9	101,0	2.416,0	456,1
1991	15.600,0	12.700,0	5.342,5	532,7	904,6	160,6	407,7	26,3	0,0	229,1	692,5	88,0	781,1	113,1	107,8	2.429,0	483,7
1992	16.800,0	13.700,0	5.882,3	623,0	922,5	169,5	483,9	37,5	0,0	253,3	732,9	94,7	878,3	117,8	110,8	1.993,0	493,9
1993	17.400,0	14.200,0	6.495,8	689,6	909,3	180,1	393,1	46,2	0,0	263,4	757,4	89,9	573,3	122,7	121,5	2.008,0	499,1
1994	17.800,0	14.900,0	6.878,1	713,5	920,5	189,0	430,4	55,6	0,0	149,2	779,8	91,3	629,1	127,6	137,0	2.923,0	507,5
1995	18.100,0	15.000,0	6.990,6	725,5	922,3	196,7	460,8	62,0	0,0	152,8	757,2	96,3	685,5	132,5	157,1	2.096,0	537,4
1996	18.400,0	15.300,0	7.173,8	728,2	909,8	222,7	499,0	68,5	0,0	155,5	725,4	117,1	737,8	138,1	168,3	1.992,0	531,8
1997	19.000,0	15.900,0	7.314,0	732,7	890,3	237,6	550,6	73,0	0,0	161,1	679,9	114,4	884,5	142,8	172,9	2.121,0	526,6
1998	19.100,0	16.000,0	7.365,8	734,3	903,1	249,5	609,8	79,9	0,0	0,0	678,2	111,1	0,0	147,7	175,2	0,0	522,0

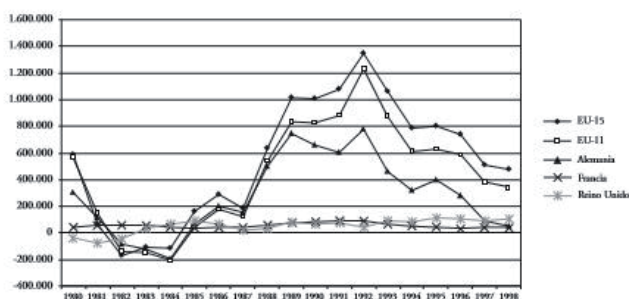
In the Table 5.2, we can observe the evolution of total immigration flows towards the

Member States. It is remarkable that Germany has the biggest influx reaching over half a million people with a positive trend in the 80's and a negative one in the 90's. The rest of the countries are far from presenting similar figures to Germany but at least three countries had a figure of more than 100000 people annually: United Kingdom with 200000-250000, The Netherlands with 100000 people and Italy with 150000 people since the 90's

On the other hand, if we analyse the flows of immigrants in net terms we can observe three differentiated periods:

- A deep decrement of immigration the first years of the 80's due to the economic crisis in the territory that made it less necessary the immigrant workforce
- A slight and gradual increment since 1984 when the economic recovery was happening until 1992 when it reached a peak of 1350000 people coming into the territory
- A gradual and profound decrement of immigration since 1992 due to the restrictive migration policies. (Areskurrinaga E, 2012)

Graph 2.2 Net Migrations in the European Union, 1980-1998



Source: Areskurrinaga Mirandona E. (2012). La evolución de los flujos migratorios hacia

la Unión Europea en las dos últimas décadas y su impacto en el mercado de trabajo. P.48

2.3. EVOLUTION OF IMMIGRATION IN THE EUROPEAN UNION FROM 2005

2.4. TO THE PRESENT

In this section we are going to analyze the most recent flows of migration in the European Union during the last 10 years to gain some insight into which countries are the most receivers of immigrants in our community.

Table 2.2 Total Immigrant flow in the European Union Countries

	Alemania	Austria	Bélgica	Dinamarca	España	Finlandia	Francia	Grecia	Holanda	Irlanda	Italia	Luxemburgo	Portugal	Reino Unido	Suecia
1985	512.108		47.042	36.214	20.103	10.465		33.729	79.362		82.183	6.582		232.000	33.127
1986	598.479		48.959	38.932	14.088	9.927		30.569	87.387		75.725	7.448		250.000	39.487
1987	614.603		49.750	36.296	16.863	9.142		34.787	95.935	17.200	104.459	8.248		211.000	42.666
1988	903.892		48.484	35.051	24.380	9.720		37.322	91.237	19.200	85.791	9.064		216.000	51.092
1989	1.522.190		54.169	38.391	33.910	11.219		38.644	98.916	26.700	81.201	9.143		250.000	65.866
1990	1.651.593		62.662	40.715	33.966	13.558		42.021	117.350	33.300	166.754	10.281		267.000	60.048
1991	1.198.078		67.460	43.567	24.320	19.001		24.346	120.249	33.300	126.935	10.913		267.000	49.731
1992	1.502.198		66.763	43.377	38.882	14.554		32.133	116.926	40.700	113.916	10.696		216.000	45.348
1993	1.277.408		63.749	43.400	33.026	14.795		27.472	110.559	34.700	100.401	9.857		209.000	61.872
1994	1.082.553		66.147	44.961	34.123	11.611			92.143	30.100	99.105	10.030		253.000	83.598
1995	1.096.648		62.950	63.187	36.092	12.222			96.099	31.200	96.710	10.325		245.000	45.887
1996	959.691	69.930	61.522	54.445	29.985	13.284			108.749	39.200	171.967	10.027		258.000	39.895
1997	840.633	70.122	58.849	50.105	57.877	13.564			109.860	40.000		10.423		285.000	44.818

Source: Areskurrinaga Mirandona E. (2012) La evolución de los flujos migratorios hacia la Unión Europea en las dos últimas décadas y su impacto en el mercado de trabajo. P.46

Table 2.3 Total Immigration in the European Union countries 2005-2014 (in thousand people)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Belgium	132.810	137.699	146.409			135.281	144.698	147.387	118.256	124.844
Bulgaria									18.570	26.615
Czech Republic	60.294	68.183	104.445	108.267	75.620	48.317	27.114	34.337	30.124	29.897
Denmark	52.458	56.750	64.656	57.357	51.800	52.236	52.833	54.409	60.312	68.388
Germany	707.352	661.855	680.766	682.146	346.216	404.055	489.422	532.175	692.713	884.893
Estonia	1.436	2.234	3.741	3.671	3.884	2.810	3.709	2.639	4.109	3.904
Ireland										
Greece										
Spain									280.772	305.454
France		301.544	293.980	296.608	296.970	307.111	319.816	327.431	332.640	339.902
Croatia									10.378	10.638
Italy	325.673	297.640	558.019	534.712	442.940	458.856	385.793	350.772	307.454	277.631
Cyprus	24.419	15.545	19.017		22.581	20.206	23.037	17.476	13.149	9.154
Latvia	6.681	8.212	7.517	4.678	3.731	4.011	10.234	13.303	8.299	10.365
Lithuania									22.011	24.294
Luxembourg	14.397	14.352	16.675	17.758	15.751	16.962	20.268	20.478	21.098	22.332
Hungary	27.820	25.732	24.361	37.652	27.894	25.519	28.018	33.702	38.968	54.581
Malta	187	1.829	6.730	6.043	6.161	4.275	5.465	7.111	8.428	8.946
Netherlands	92.297	101.150	116.819	143.516	122.917	126.776	130.118	124.566	129.428	145.323
Austria										
Poland	9.364	10.802	14.995		189.166	155.131	157.059	217.546	220.311	222.275
Portugal	49.200	38.800	46.300	29.718	32.307	27.575	19.667	14.606	17.554	19.516
Romania										
Slovenia										
Slovakia	9.410	12.611	16.265	17.820	15.643	13.770	4.829	5.419	5.149	5.357
Finland					26.699	25.636	29.481	31.278	31.941	31.507
Sweden	65.229	95.750	99.485	101.171	102.280	98.801	96.467	103.059	115.845	126.966
United Kingdom										

Source: EUROSTAT (2016)

As can be seen from the table 5.3, the country that receives the biggest volume of immigrants is Germany, describing a positive tendency that is aggravated mainly owing to the economic crisis and the high unemployment rates in the European Union. This influx of German immigration is triggered mainly by the qualified workforce that moves to this country looking for a job and better economic conditions. This is possible thanks to the communitarian legislation that allows European citizens to travel and work freely within the communitarian borders.

Furthermore, we can also observe that the three countries following Germany in number of immigrants are Italy, France and Spain. These three countries have certain geographical similarities that made them pruner to

receive people in those years. All of them are Mediterranean countries which are very close (Spain and Italy even have borders with) to the African continent. In these recent years we have attended one migration crisis with illegal immigration coming from Africa due to its poverty and its economic conditions and these figures show which countries were the main characters in that crisis.

3. EUROPEAN UNION MIGRATION NORMATIVE FRAMEWORK

Once we have analyzed the concept of international migration and its international regulation in depth as a worldwide phenomenon, we must proceed to examine how migration is regulated in the European Union. It will be important to be conscious of the European regulation¹⁹ to move, later, further on different aspects of migration.

According to the European Union legislation²⁰ we have the following third-country nationals' consideration and the following kinds of migration: (EU Agency for Fundamental Rights, 2014)

- People whose rights emanate from the EU regulation about the free movement of people
- People whose rights emanate from International Agreements
- Immigrants of short and long length
- People who need protection
- Migrants in an irregular situation

To display the subcategories within this classification and to clarify the types of migrants we can observe the following chart:

¹⁹ International Organization for Migrations (2012) : *Derecho Migratorio Internacional, Fundamentos de Gestión de la Migración*, Vol. 1: Fundamentos de la Gestión de la Migración, Sección 1.6

²⁰ EU Agency for Fundamental Rights (2014): *Manual Europeo sobre asilo, fronteras e inmigración*. Luxemburg. Council of the EU.

People whose rights emanate from the EU regulation about the free movement of people	Relatives of the EU Member States Citizens
People whose rights emanate from International Agreements	Relatives of Citizens from the European Economic Space and Switzerland
	Turkish Citizens and their relatives
	Citizens of countries that have signed multilateral or bilateral agreements with the EU
Immigrants of short and long length	Relatives of regrouping third-country nationals
	Residents of long length in the EU
	Blue Card owners and their relatives
	Workers
	Researchers
	Students
	Temporary workers
People who need protection	Workers moved within the same company
	Asylum requesters
	Beneficiaries of the Subsidiary Protection Statute
	Beneficiaries of temporary protection
	Refugees
Migrants in an irregular situation	Victims of human trafficking
	Irregular third country nationals
	Irregular third country nationals whose expulsion has been proposed

Source: European Union Agency for Fundamental Rights, 2013

At this point we must highlight that migration is regulated in Europe within different legal frameworks: Member States' national laws, Communitarian Legislation, the ECHR, the ESC and other international binding obligations. Next, we will describe the functioning of these regulations and how they are implemented.

3.1. MIGRATION IN CONVENTIONS AND AGREEMENTS

3.1.1. European Convention for Human Rights

On the ground of the article 19 of the ECHR, the EHRC and the former

European Human Rights Commission were created to safeguard the obligations imposed by the agreement. The EHRC examines complaints presented by individuals, groups, non-governmental organizations and different entities which see the agreement not accomplished.

Regarding to the European Convention for Human Rights²¹, it only counts on some dispositions in which foreigners are mentioned explicitly or in which some rights are limited to nationals or legal residents. (Articles 2, 3 and 4 of the Protocol n°4 and article 1 of the Protocol n°7 of the ECHR, 1950) (Fundamental Rights Agency, 2014)

In the Article 2.2 it is claimed that everybody should be free to leave their country. *“Everyone shall be free to leave any country, including his own.”* (Article 2.2 Protocol n° 4 ECHR, 1950) However there are some restrictions to this liberty if it can compromise the security, and the rights and freedoms of a Democracy State and to maintain the public order. *“No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of order public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*(Article 2.3 Protocol n° 4 ECHR, 1950) and *“The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society”* (Article 2.4 Protocol n° 4 ECHR, 1950)

According to the prohibition of the expulsion of nationals, the article 3

²¹ Council of Europe (1950) *European Convention for Human Rights*: Retrieved from: https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Convention_ENG.pdf

states that nobody should be expelled from any territory from which he is national and nobody should be private the territory of which he is national. *“No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.”*(Article 3.1 Protocol n°4 ECHR, 1950) *“No one shall be deprived of the right to enter the territory of the state of which he is a national”* (Article 3.2 Protocol n°4 ECHR, 1950)

In the Article 4 aliens²² are prevented to be expelled collectively *“Collective expulsion of aliens is prohibited.”*(Article 4 Protocol n° 4 ECHR, 1950)

Regarding the Protocol n°7, in the article 1 it is claimed that any alien should be expelled from a country in which he is resident provided it does not represent a threat to the security, and the public order. *“An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law [...]”* (Article 1.1 Protocol n°7 ECHR, 1950) and *“An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.”* (Article 1.2 Protocol n° 7 ECHR, 1950)

3.1.2. European Social Charter

Other mechanism that deals with the regulation in terms of migration is the European Social Charter. It was adopted in 1961 and revised in 1996 and it completes the ECHR in terms of social rights.

²² An Alien is a person coming from a different country, race or group

As far as the European Social Charter²³ is concerned, there is little specific reference to migrants and migration, excepting the article 19 which deals with protection and assistance of migrant workers and their families.

Over the sections of this article the ESC defends that the migrants and their families must have the right to be provided with free services and accurate information to take all the steps against the misleading propaganda relating to emigration and immigration (Article 19.1 ESC, 1996) Furthermore, their departure, journey and reception should be facilitated to those workers and they must be provided with appropriate health services and medical attention during the journey (Article 19.2 ESC, 1996). Moreover, cooperation between emigration and immigration countries should be encouraged in terms of social services and to assure that migrant workers are not treated less favorable than national ones in terms of accommodation, remuneration, employment taxes. (Articles 19.3, 19.4 and 19.5 ESC, 1996) Also, in the last section to be remarked, migrants should be facilitated to meet their families. (Article 19.6 ESC, 1996)

3.1.3. European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe

One of the first attempts in the European migration policy to facilitate personal travel between the countries of the Council of Europe was signed in 1957. It is the European Agreement on Regulations Governing the Movement

²³ Council of Europe (1996) *European Social Charter (Revised)* Retrieved from: <http://www.refworld.org/pdfid/3ae6b3678.pdf>

of Persons between Member States of the Council of Europe²⁴.

In this precedent of the Schengen Convention it was already introduced the free movement on people within the borders of the Member States, whatever their country of residence is, by presenting a valid document. Passports and visas for visits of more than 3 months are required and the Country might have the possibility of allowing the entry only across authorized points. It is also included the clause that we will be facing all along the Regional Legislation in the UE which deals with the prohibition of entry on the ground of keeping the security and the public order. (Articles 1 – 7 European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe, 1957)

3.1.4. European Agreement on the Abolition of Visas for Refugees

The Members of the Council of Europe Saw necessary in 1959 to ease the travel of refugees, residing in their territories, due to the international advances in this area, be it the International Convention on the Status of Refugees 8 years before. This is why the Council of Europe signed the European Agreement on the Abolition of Visas for Refugees²⁵.

²⁴ Council of Europe (1957) *European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe*: Retrieved from:
<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680064588>

²⁵ Council of Europe (1959) *European Agreement on the Abolition of Visas for Refugees* Retrieved from:
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800656cf>

This Agreement reaffirms the measures taken in the International Convention on the Status of Refugees in 1951 and allows refugees to move freely among the Member States with one single Visa and for periods of not more than 3 months. Some exceptions might be introduced when the Countries consider them necessary like limiting the authorized points to cross the borders. (European Agreement on the Abolition of Visas for Refugees, 1959)

3.1.5. The European Convention on the Legal Status of Migrant Workers

The European Convention on the Legal Status of Migrant Workers²⁶ was signed in 1977 to guarantee some fundamental rights for migrant workers in the Countries of the European Council. In addition, this legal instrument also intends to avoid migrant workers being treated less favorable than national workers.

The Migrant workers shall be guaranteed with the right to leave the territory where the migrant is national and to be admitted in the territory where the job will be undertaken. Migrants also must be provided with proper information about the residence, conditions and opportunities for family reunion, living conditions, social security, taxes... (Articles 4, 6 and 7 European Convention on the Legal Status of Migrant Workers, 1977)

All migrants authorized to work in the territory as well as their families (Spouse and children) are entitled to be issued with work and residence permits

²⁶ Council of Europe (1977) *European Convention on the Legal Status of Migrant Workers*: Retrieved from: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680077323>

save in case of compromised security or public order. (Articles 8, 9 and 12 European Convention on the Legal Status of Migrant Workers, 1977)

Other measures in this Convention concerns equality in treatment between nationals and migrants deal with housing, schooling, vocational training, conditions of work, social security and medical assistance, right to organize, participation in the affairs of the undertaking, access to court... (Articles 13 – 29 European Convention on the Legal Status of Migrant Workers, 1977)

3.1.6. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

It becomes at this point extremely relevant to mention the Convention for the protection of individuals with regard to Automatic Processing of Personal Data²⁷ held in 1981 which bindingly prevents abuse in the transfer of personal data

Each Party should take the necessary measures in its domestic law to comply with the data protection principles of the Convention (Chapter II Article 4 CPIAPPD, 1981)

The personal data due to be automatically processed should be:

- Obtained and processed fairly and lawfully

²⁷ Council of Europe (1981) *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*: Retrieved from: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b37>

- Stored for specified and legitimate purposes
- Adequate, relevant and not excessive in relation to the purposes for which they are stored.
- Accurate and up-to-date
- Preserved to be only used for the purpose for which it is stored. (Chapter II Article 5 CPIAPPD, 1981)

All the data concerning racial origin, political opinions, beliefs, health and sexual life may not be processed, unless explicit permit. (Chapter II Article 6 CPIAPPD, 1981)

The previous articles may be derogated in the interest of protecting State security and public safety (Chapter II Article 9 CPIAPPD, 1981)

A Party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorization trans-border flows of personal data going to the territory of another Party. (Chapter III Article 12 CPIAPPD, 1981)
Nevertheless, some exception might exist.

The examination of this Convention is related to migration to the extent in which the registration of massive incoming immigrants can confront the liberties stipulated in this Convention. We will deal with this topic later in this research.

3.1.7. Charter of Fundamental Rights of the European Union

Over the European Union enlargement process, the Treaties did not contain any reference to Human Rights and therefore, when the CJEC started to

receive demands about Human Rights violations within the European regulation, this decided to develop a new approach to protect individuals and included the Fundamental Rights in the legislation. Hence, the European Union, conscious about the impact that its policies might have in the human rights, passed the Charter of Fundamental Rights of the EU²⁸ in 2000.

The principles included in the Chart are inspired by the Constitutions of the Member States, the ESC, the ECHR, and other International Treaties on human rights like the CCR of the United Nations (UN). At first this Charter was just a sort of “declaration” because it was not binding for the Member States to comply with but in 2009, with the Lisbon Treaty, the Charter was modified and thus, became binding (Article 51 of the Chart, 2009)

According to the topic of migration, the article 18 of the Charter of Fundamental Rights introduces for the first time the right to asylum, which is recognized as a qualified right: *“The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.”*(Art. 18 Charter of Fundamental Right of the EU, 2000)

Furthermore, the article 19 prohibit the return of a person to a situation of unjustified terror of pursuit or danger of torture (principle of non-devolution) *“1. Collective expulsions are prohibited. 2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment*

²⁸ European Parliament (2000) *Charter of Fundamental Rights of the European Union*: Retrieved from: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

or punishment.”(Art 19.1 and 19.2 of the Charter of Fundamental Rights of the EU, 2000) (Fundamental Rights Agency, 2014)

3.2. MIGRATION IN THE EU TREATIES

The European Union legislation rules the most relevant path to be followed within the Community and uses, for this purpose, two mechanisms: the Treaties and the derived law.

According to the regulation coming from the Treaties, we can observe that the European Union had regulated very little in terms of entrance, residence and work of migrants before 1992 although it had some laws as regards free movement of communitarian workers.

Since the creation of the European Economic Community (EEC) in Mars 1957 with the Rome Treaty, it was intended to harmonize and integrate the immigration and asylum policies, defining them as a matter of common interest for the whole Union. Notwithstanding, this policies had not been delivered to a supranational community and they were being regulated with national laws in each Member State, preventing a communitarian regulation to be deployed. Nevertheless, those national policies in terms of immigration and asylum were very similar and dissimilar at the same time among the different countries. The biggest similarity shared by all the laws is the raising restrictive atmosphere, which has been displayed since the 70's in all the regulatory reforms, but they diverge in the normative concept given to both economic migration and asylum seekers.

It should be remarked that despite the lack of communitarian

harmonization, a lot of efforts had been made to create and allow some coordination among countries regarding these topics. (Pajares Alonso, 2002)

The clearest example of these efforts, previously mentioned, is the Schengen Convention.

3.2.1. Schengen Convention

3.2.1.1. Origins of Schengen Convention

Since the beginning of the European Communities, the ECSC, the EURATOM, and the EEC and their unification under the First Pillar of the communitarian structure derived from the Maastricht Treaty in 1992, the search of a unified European Union was constant. This integrating process was slow and the result of many agreements and Treaties through which Europe was heading to a complete economic, political and social unification. Since the very beginning it became necessary to consider allowing and achieving a free movement of people among the Member States as a huge advance to that process.

This could compromise the security of the countries involved and, thus, it was not strange that many people became reluctant to that measure. The dispute was big and it was very difficult to reach an agreement between those in favor of the free movement and those against. This was the spark of the Schengen Convention.

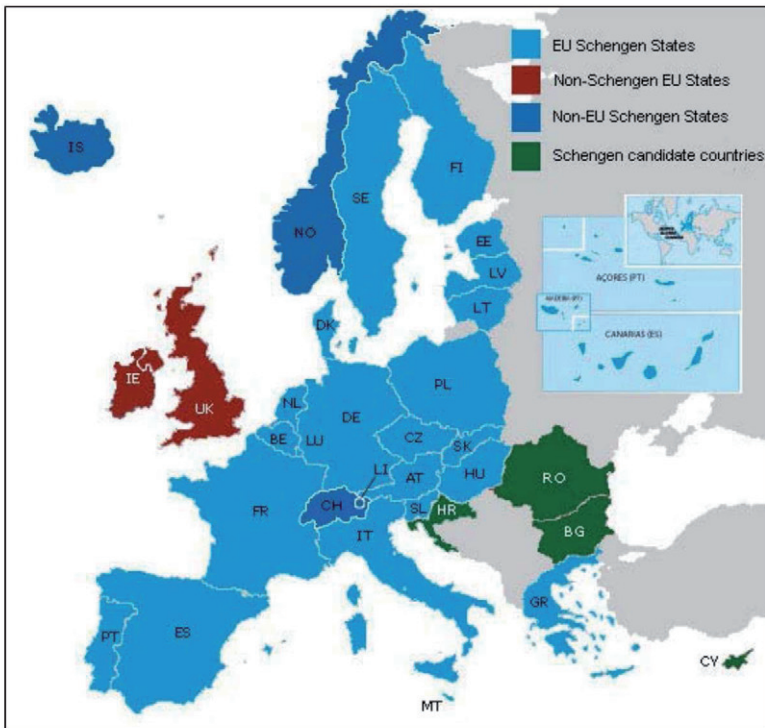
That is why the 14 of June 1985 France, Germany, Belgium, Luxemburg and the Netherlands signed a first agreement that triggered the gradual removal

of borders and internal border controls to achieve the goals aimed by the Communities.

Five years later in 1990, the Schengen Convention²⁹ was signed to deploy official and explicit measures for that introduced by the agreement. In that decade, from 1985 and 1996, other countries, starting to agree on the free movement of people, adhered to the Convention, as Italy in 1990, Spain and Portugal in 1991, Greece in 1992, Austria in 1995 and Finland, Denmark and Sweden in 1996. Norway and Iceland are also part of the agreement. During the following years other countries also joined it such as: the United Kingdom in the year 2000 (Council Decision 2000/365/EC), Ireland in 2002 (Council Decision 2002/192/EC) and Czech Republic, Estonia, Latvia, Lithuania, Malta, Hungary, Poland, Slovenia, and Slovakia in 2007 and Switzerland in 2008. It should be clarified that belonging to the Schengen Convention does not necessarily mean to belong to the *Schengen Space* and that Sweden, Finland, Denmark, Norway, and Iceland belong to the *Nordic Union for Passports*.

²⁹ States of the Benelux, Economic Union, the Federal Republic of Germany and the French Republic (1990). *Applying the Schengen Agreement of 14 June 1985*: Retrieved from: http://www.ucc.ie/archive/hdsp/Schengen-agreement_io.pdf

Figure 3.2: Schengen Area



Source: European Commission, 2013

The fundamental rules implemented by the Schengen Convention were:

- Removal of internal border controls
- Definition of border regulations for the external borders
- Split in ports and airports of Schengen Countries and third countries
- Visa homogenization
- Coordination among the institution in charge of border control

- Regulation against illegal immigration
- Asylum regulation
- Judicial Cooperation
- Creation of the Information Schengen System (ISS)

In 1999, with the Amsterdam Treaty, the Convention was introduced in the Communities. An institutional unification was also produced and the Council became to be in charge of the competencies of the Schengen Executive committee and the General Secretary of the Council replaced the Schengen General Secretary (Council Decision 1999/307/EC of 1st of May 1999)

Hence, the Convention became completely applicable for all the Member States and the Second and Third Pillars were reorganized under the common goal of freedom, security, and justice. (Luque González, 2004)

3.2.1.2. Strengthen the Schengen Area

The free movement of citizens within the Schengen Space is based on mutual trust amongst the Member States and thus, the Commission proposed to mechanisms to improve the evaluation and control of the area. (Regulation (EU) n° 1053/2013)

Furthermore the Regulation (EU) n° 1053/2013 allows restoring the border controls when the security and the public order of a territory might be being compromised and threatened. (www.er-lex.europa.eu, strengthening the Schengen Area, 2004)

3.2.1.3. Migration in the Schengen Convention

First of all, in the Title I, the agreement sets the definitions of the concepts

that will be used along the writing to clarify the framework that the Convention will deal with. Next, in Title II, the borders and the free movement are regulated and we consider relevant to highlight the article 3 where it is specified that the external Schengen Borders may be crossed only at authorized crossing points in the opening hours, causing penalties if not complied. Furthermore, people boarding planes from Third States³⁰ shall be subject of personal and hand baggage checks in the airport of arrival and those travelling to Third States, in the airport of departure (Articles 3 and 4 Title II Chapter 2 Schengen Convention, 1990)

Moreover, this agreement rules the duration limit of visits, being this up to 3 months and in accordance with certain conditions such as: possession of valid visa or document allowing to entry, not representing a threat for the security or the public order in the Member States and not having been reported as a person not to be permitted entry. Notwithstanding, here an important nuance is introduced because the States could derogate this article in behalf of humanitarian grounds: *“Entry to the territories of the Contracting Parties must be refused to any alien who does not fulfill all the above conditions unless a Contracting Party considers it necessary to derogate from that principle on humanitarian grounds or in the national interest or because of international obligations.”* (Article 5 Title II Chapter 2 Schengen Convention, 1990); and should report the other countries about this situation.

It is also extremely relevant to mention that intense cooperation among Member States to *effectively exercise the checks and surveillance*, being aware that data relating to named individuals must be excluded from that share of

³⁰ Third State shall mean any State other than the Contracting Parties.

information. (Article 8 Title II Chapter 2 Schengen Convention, 1990)

The effort of this agreement is also devoted to harmonize the Visas to achieve a single authorized Visa within the Schengen territory which should be divided in three different categories: a travel visa for one or more entries, being the duration of each entry no more of three months; a transit visa allowing its holder to pass through the Countries once, twice or several times to reach the third country. This transit must not last more than five days; and a visa for long visits (over three months). All Visas should be issued mainly by consular and diplomatic authorities to those people who fulfil the conditions specified in article 5. (Articles 9 – 18 Chapter 3 Title II Schengen Convention, 1990)

Aliens having an authorized Visa, not being required a Visa or holding a residence permit may move freely within the territory during the duration of that Visa/Permit. Those who delay the periods established in their Visas might be expelled from the Contracting Countries to another countries, be them the one of origin or other with which the State has re-entry agreements. (Articles 19 – 24 Chapter 4 Title II Schengen Convention)

According to Asylum procedure, this Convention reaffirms its obligation with the Geneva Convention in 1951 and the New York Protocol in 1967 and its commitment to cooperate with the with the United Nations High Commissioner for Refugees in the implementation of those instruments.

The Member State responsible for the processing of an application for asylum should comply with several steps and the responsibilities of that procedure are established in the article 30 Chapter 7 Title II Schengen Convention, 1990. We can mention the following one among others:

- If a Contracting Party has delivered to the applicant for asylum a visa or

a residence permit, that Member State should be responsible for processing the application

- If two or more Contracting Parties has issued a visa or residence permit, the responsible Country should be the one that has delivered the document that expire last.
- As long as the applicant for asylum has not left the territory, the responsibility shall subsist.
- If the Contracting Parties exempt the applicant for asylum from the requirement of visa, the Country across the external borders of which the applicant has entered the territory shall be responsible.

Close cooperation among countries is fundamental and every State should deliver the following information according to Asylum applicants, if required:

- Identity and travel documents
- Places of residence and itineraries of the Journey
- Residence permits or visas issued by a Contracting Party
- The place where the application for asylum was submitted
- Where appropriate, the date of submission of any previous application for asylum, the date of submission of the present application, the point reached in the procedure and the import of the decision taken. (Article 38 Chapter 7 Title II Schengen Convention, 1990)

3.2.2. Maastricht Treaty

The Maastricht Treaty³¹, also known as Treaty on European Union was signed on the 7th of February 1992 and deployed on the 1st of November 1993, and represents the first step in the communitarian field in terms of asylum and immigration. On the ground of this Treaty the communitarian competency regarding migration is not established yet but it points out that these issues must be dealt within the European Union.

First of all, the Treaty defines the concept of citizenship of the European Union through which every citizen of a Member State is a citizen of the EU enjoying the rights set in the Treaty and complying with the duties also imposed. Every citizen should have the right to move freely within the European territory, having the possibility of residence and political exercise in all the Member States. Furthermore, a national of a Member State which is not represented in a Third Country should be entitled to be protected by diplomatic and consular authorities of every Member State represented there. (Article 8 Maastricht Treaty, 1992)

Secondly, on the ground of this Treaty, the 3 Pillars of the Union³² got defined. The first Pillar represents the affairs dealt with competencies within the Community, and the second and third pillars are areas of international cooperation, not being issues fully integrated in the European framework but in the road of becoming so. Asylum and immigration are included in the 3rd Pillar

³¹ European Parliament (1992). *Maastricht Treaty (Treaty on the European Union)*: Retrieved from: http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_on_european_union/treaty_on_european_union_en.pdf

³² 1st Pillar: Communitarian Pillar; 2nd Pillar: Foreign affairs; and 3rd Pillar Justice and Internal Affairs

(as previously explained, not still an actual competency of the Community but in the road of being) (Title VI Article K Maastricht Treaty, 1992) (Pajares Alonso, 2002)

3.2.3. Amsterdam Treaty

The Amsterdam Treaty³³ was signed on the 2nd October 1997 and started to be implemented on the 1st of May 1999 and has been one of the major advances in terms of migration within the European Union because immigration and asylum were included in the 1st Pillar for the first time, becoming, this way, a communitarian competency and opening the likelihood of developing a communitarian regulation. Notwithstanding, some restrictions are introduced and over the first five years, decisions were made by the Council and by majority, and not by the normal co-decision procedure³⁴ that rules other fields.

The Amsterdam Treaty proposed to put in practice, in a period of five years since the signature of the Treaty, several measures to establish gradually an area of freedom, security and justice:

- Measures to ensure the absence of controls on persons, either from Member States or Third Countries, when they cross internal borders
- Standards and processes to implement controls on people in the external borders.

³³ European Parliament (1997) *Amsterdam Treaty*: Retrieved from:

<http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>

³⁴ Co-decision procedure refers to the normal decision making process which is carried out by agreement between the Council and the Parliament.

- Regulation on visas for visits of no longer than 3 months with a list of third countries which nationals could have access to those visas.
- Uniform format for Visas and its regulation

In terms of Asylum, this Treaty reaffirms the measures of the Geneva Convention in 1951 and the New York Protocol in 1967:

- Mechanisms to establish the responsibility of applications for asylum
- Minimum standards to receipt asylum seekers
- The standards concerning the qualification of third country nationals as refugees.
- Criteria for granting or withdrawing refugee status
- Criteria to give temporary protection, conditions of entry and residence permits including those referring to family reunion.
- Promote balance of effort between the contracting parts in accordance with the consequences of receiving refugees and displaced people

Furthermore, it is claimed that this measure should not affect the right of the member States to safeguard the security and the public order. It is relevant to remark that in case of an emergency characterized by a massive inflow of third country nationals, the Council may, by majority, adopt temporary measures to protect the Member States. This is extremely important owing to the emergency situation we are facing nowadays. Moreover, cooperation among countries is intensively encouraged. (Title IIIa Articles 73i – 73n Amsterdam Treaty, 1999)

After the Amsterdam Treaty it took place two Summits: Tampere 1999 and Laeken 2001 to see the evolution and advances that were carried out in migration. They were referred to derived law which will be examined later in

this research.

3.2.4. Lisbon Treaty

In this section we will be dealing with the advances introduced by the last effort made in terms of the law of Treaties, the Lisbon Treaty³⁵ signed in 2007.

The content concerning migration does not differ substantially from the one introduced by the Amsterdam Treaty, nevertheless it collects all the intentions included in the previous Treaties and polish some of the measures, becoming a perfect summary of the action plan that the European Union draws in the migration arena.

The EU should on the ground of this Treaty develop a policy to remove all the controls on people when crossing internal borders and implement efficient checks in the crossing of external borders with an integrated management system for external borders.

For these purposes the Parliament and the Council shall adopt measures regarding:

- Common policy on visas and residence permits
- Checks in external borders
- Measures to allow third country nationals move freely within the territory (Chapter 2 Article 62 Lisbon Treaty, 2009)

³⁵ European Parliament (2007) *Lisbon Treaty*: Retrieved from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=ES>

Furthermore, the European Union should implement a policy on asylum, subsidiary protection and temporary protection to protect third country nationals requiring international protection in accordance with the *principle of non-refoulement*. These measures should comply with the Geneva Convention 1951 and the New York Protocol in 1967:

- Uniform status of Asylum, subsidiary protection and temporary protection
- Common system of protection in case of massive inflows
- Procedure to grant or withdraw asylum status
- Criteria to evaluate the responsibility of a Member State for an application for asylum
- Partnerships with third countries to manage inflows

Moreover, the Union should manage also the migration flows, the fair treatment of third country nationals and measures to avoid lack of security and trafficking in human beings.

- Conditions of entry and residence and issue of long-terms visa and residence permits
- Defining the rights of third country nationals residing in the European Union

These measures should not affect the right of every Member State to set the volume of admission of third country nationals seeking work and employment.

In addition, all these policies must be governed by the principle of solidarity and fair sharing responsibility, including finances, among Member States (Chapter 2 Article 63 Lisbon Treaty, 2009)

3.3. MIGRATION IN THE DERIVED LAW

We have thoroughly studied the International Regulation tackling Migration and the specific Regional Rules that shape the way in which we understand and deal with the different types of Migration. Notwithstanding, it is completely necessary to undertake one more analysis in further detail to complete the overall insight into the regulation of Migration. This examination is focused on the Derived Law

The Derived Law is the part of the Communitarian Law that has been created from the Original Law, i.e. the group of Communitarian Regulation sourced from the Institution in appliance of the Treaties. This Derived Law comes from diverse acts of the Communitarian Institutions, especially the Council and the Commission.

The main regulations belonging to the Derived Law are:

- Regulations: binding general regulations which are forcedly and directly applicable in the Member States since its publication in the Official Diary of the European Communities.
- Directives: binding regulations which are not directly applicable in the Member States until a determined fact.
- Decisions: regulations which are binding only to the country that they are addressed to.
- Recommendations: they are not regulation as such since they are not binding.

Due to the limited size of the project, in the following sections, we are going to display and examine only the most relevant derived rules concerning

Migration.³⁶

3.3.1. Legal Immigration³⁷

This bunch of policies refer to the regulation of the conditions of entry and residence for certain types of migrants such as qualified workers, students and researchers, family reunification and long-term residents.

Labor migration plays an extremely important role in the European Union nowadays since the young immigrant workforce might be a solution for the unemployment and the demographic crisis that is present in Europe. Therefore, it is completely fundamental to introduce several measures to organize and regulate this workforce flow to result in positive consequences for our continent. (European Commission)

3.3.1.1. *European Union Blue Card Directive*

The Council Directive 2009/50/EC of 25 May 2009³⁸ regulates the conditions of highly qualified immigrants to increase the EU's competitiveness in an International world where there is a huge demand of qualified workers.

The Directive deploy very attractive conditions for non-EU citizens

³⁶ A thorough list of all existence regulation of the field will be included in the section annexes.

³⁷ European Commission (2016) *Migration and Home Affairs*; Retrieved April 2016 from: http://www.ec.europa.eu/dgs/home-affair/what-we-do/policies/legal-migration/work/index_en.htm

³⁸ Council of the European Union (2009): *Directive 2009/50/EC "Blue Card Directive"*. Retrieved from: <http://www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0050>

considered as highly qualified workers to raise skilled employment by creating a harmonized fast-track procedure and common criteria (work contract, professional qualifications and a minimum salary) for issuing a special residence and a work permit called “EU Blue Card”

This special permit allows the qualified workers to ease the access to the labor market and provides the holders with socio-economic rights and favorable conditions for family reunification and movement around the European Union. Furthermore, this Directive encourages ethical recruitment and the Blue Card is demand-driven not being useful as a condition for admission, it is based on work contract. Its period of validity goes from 1 to 4 years with possibility of renewal. (European Commission)

3.3.1.2. Directive on Seasonal Workers

According to several figures and studies, more than 100,000 non-EU citizens come to the EU to be seasonally employed each year - i.e. to work only for certain seasons. The European Union face every year the need of seasonal workers to fill in these term positions, nevertheless, it becomes sometimes extremely difficult to find those workers and there the non-EU workforce is very important for the Continent. Moreover, this category of workers might suffer from exploitation and poor labor, health and safe conditions that can be a threat for them. These positions are commonly located in sectors such as: agriculture, horticulture and tourism.

Hence, the European Parliament adopted the Directive 2014/36/EU of the

European Parliament and the Council³⁹ on the 26 of February 2014. This Directive establishes the conditions of entry and stays of third-country nationals for the aim of seasonal employment and provides with clearer and simpler admission requirements to avoid people working in an unauthorized way in seasonal jobs and to avoid people staying in the EU for longer that they are allowed to – 90 days save special situation.

In addition, the health and safety of the workers will be assured to prevent exploitation and poor labor conditions of the non-EU seasonal workers. Moreover, the workers will enjoy accommodation during the stay and the will be entitled with a re-entry procedure to ease the return to the country again on other seasons. This way, with these circular flows, the development, skills and investments of both countries will be rocketed. (European Commission)

3.3.1.3. Directive for intra-corporate transfer of non-EU skilled workers

Due to the increasingly globalized world in which we live nowadays, skills demand has made desirable for international corporations to transfer temporarily certain workers to the subsidiaries. This transference can bring innovation to Europe, enhance competitiveness, increase investment flows...

However, there are a lot of limitations in this transference such as: a lack of clear specific schemes, the complexity and diversity of visa or work permit requirements, costs and delays. Hence, the European Parliament and the

³⁹ European Parliament and the Council of the European Union (2014): *Directive 2014/36/EU “Seasonal Workers Directive”* Retrieved from: <http://www.eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422353192491&uri=CELEX:32014L0036>

Council adopted the Directive 2014/66/EU on the 15th of May 2014⁴⁰

This Directive was designed to provide companies outside and inside the EU with a set of rules and a better and faster access to global talent to meet staffing needs for managers, specialists and graduate trainees. The Directive also includes better residence conditions for the families and encourages mobility within the EU.

3.3.1.4. Single Permit Directive

The Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011⁴¹ supported by the Regulation (EC) N° 1030/2002⁴² creates a set of rights for non-EU citizens residing legally in a EU State. It should be applicable to non-EU nationals authorized to reside and work in the EU. It provides a single and work permit, a single application procedure for the permit and a set of rights for those already admitted but not still granted with the long term resident status in working conditions, training, recognition of diplomas, social security, tax benefits, access to goods and services, procedures for housing...

3.3.1.5. Directive on the right to family reunification

⁴⁰ European Parliament and the Council of the European Union (2014); *Directive 2014/66/EU “Directive for intra-corporate transfer of non-EU skilled workers”* Retrieved from: <http://www.eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422353579722&uri=CELEX:32014L0066>

⁴¹ European Parliament and the Council of the European Union (2011); *Directive 2011/98/EU “Single Permit Directive”* Retrieved from: <http://www.eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0098>

⁴² Council of the European Union (2002); *Regulation (EC) N° 1030/2002*. Retrieved from: <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:157:0001:0007:EN:PDF>

One of the major issues concerning migration is the possibility of reuniting families which have had to be separated by migration and that should have the right to come together again. This is applicable to legal migration as well as to asylum seekers.

The Directive 2003/86/EC of 22 September 2003⁴³ sets common regulation for family reunification in 25 Member States and determines the conditions to reunite the family as well as their rights. On the ground of this directive, third country nationals legally residing in the EU can bring the following family members:

- Spouse
- Under-age children
- Children of the spouse
- Unmarried partner (exception)
- Adult dependent children +21 (exception)
- Dependent old relatives

These family members receive a residence permit; obtain access to education, training and employment. The maximum period of time to reside in EU because of family reunification is five years. After that period they should apply for autonomous status. This Directive reserves the right to withdraw the right to reunification if some family member might be a threat to the security or the public order.

⁴³ Council of the European Union (2003): *Directive 2003/86/EC "Directive on the right to family reunification"* Retrieved from: <http://www.eur-lex.europa.eu/legal-content/EN/TEXT/?uri=CELEX:32003L0086>

3.3.2. Irregular Migration and Return

3.3.2.1. Return Directive

Every year between 400,000 and 500,000 people must be ordered to leave the EU because they have entered the territory or reside in it illegally. Therefore, it is necessary to regulate how they will have to leave and where they will be heading afterwards.

Thus, in 2008, the EU approved the Return Directive⁴⁴, which entered into force in 2010. This legal instrument provides clear, transparent and fair rules for the return of the irregularly staying migrants, the use of coercion, detention and re-entry inside the human rights and individual freedoms framework.

The main points dealt in the Directive are:

- Fair and transparent process for decisions on the return of irregular immigrants
- Return illegal migrants and provide them legal status
- Granted Period of Voluntary departure
- Minimum set of basic rights to immigrants pending departure (Health care and education)
- A limit on coercion
- Establish minimum safeguards for detainees.

⁴⁴ European Parliament and the Council of the European Union (2008): *Directive 2008/115/EC "Return Directive"* Retrieved from: <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

3.3.3. Asylum System

In this section we will be tackling the regulations concerning one of the most controversial types of migration since asylum seeking is causing nowadays one of the major crises in the EU History. This is the reason why it becomes fundamental to know the regulation to reach a humanitarian solution for the refugee crisis that we will explain in further detail later in this report.

3.3.3.1. *Asylum Procedures Directive*

The Asylum Procedure Directive⁴⁵, applicable since the 21st of July 2015 steps forward in the following aspects.

- Clearer rules on how to apply: arrangements at the borders to ensure every applicant that their application will be processed quickly and effectively.
- Faster processes: no application should take over 6 months to be processed.
- Better training for decision-makers and more early information to applicants to know how the processes work
- Special support for people in need with some illness or disability including sufficient time to explain the claim

⁴⁵ European Parliament and the Council of the European Union (2013): *Directive 2013/32/EU "Asylum Procedures Directive"* Retrieved from: <http://www.eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0032>

- Special processes for not well-founded cases (accelerated and border procedures). Children and victims of torture will be prevailed in this situation.
- Clearer access to court
- Better equipment to prevent the States from being deceived

3.3.3.2. *Reception Conditions Directive*

The Revised Reception Conditions Directive⁴⁶ was adopted in 2015 to ensure the asylum seekers certain conditions when they arrive in the mid time while the application is processed (housing, food, health care and employment).

The key steps of this Directive have been the following ones:

- Detailed common rules on the issue of detention of asylum seekers in fully alignment with the Human Rights
- Thorough list of detention grounds to avoid arbitrary practices
- Limits to detention of weak people
- Legal guarantees such as: legal assistance and information.
- Obligation to conduct individual evaluations to clarify if some asylum seeker is in need of psychologic support
- Access to employment guaranteed at most in 9 months.

3.3.3.3. *Qualification Directive*

⁴⁶ European Parliament and the Council of the European Union (2003): *Directive 2013/33/EU "Reception Conditions Directive"* Retrieved from: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0033>

The Qualification Directive⁴⁷ provides uniform standards to prevent people from being tortured or killed in wars or political conflicts. In the ground of this Directive, asylum seekers are protected from *refoulement*, are given with residence permits, travel documents are eased to access education, social welfare, healthcare, housing...

The new Qualification Directive will contribute to improve the quality of decision-making:

- Clarifies the grounds for granting international protection and provides efficiency in the asylum process to prevent fraud.
- Recognizes the rights of the beneficiaries of international protection (subsidiary protection) on access to labor market and health care
- Extends the duration of validity of residence permits
- Takes into account children and gender-related issues when processing the asylum applications
- Improves the access to integration

3.3.3.4. *Dublin Regulation*

The Dublin Regulation⁴⁸ sets the State responsible for the examination of the asylum application. The criteria go, hierarchically, from family

⁴⁷ European Parliament and the Council of the European Union (2011): *Directive 2001/95/EU “Qualification Directive”* Retrieved from: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095>

⁴⁸ European Parliament and the Council of the European Union (2013): *Regulation (EU) N° 604/2013 “Dublin Regulation”* Retrieved from: <http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=jHNITp3HLjqw8mqGbQSpZh1VWpjCyVQq14Hgcztw4pbfSQZffirm!557467765?uri=CELEX:32013R0604>

considerations, to recent possession of visa, to whether the applicant has entered legally or illegally.

The new Regulation includes:

- Crisis management mechanisms to address root dysfunctional causes of national asylum systems
- Protection of applicants: compulsory personal interview, guarantees for minors and possibility of reunifying relatives.
- Ensure legal assistance
- Single ground for detention in case of risk of absconding and restrict the duration of detention
- Possibility for asylum seekers that could be treated according to the Return Directive, to be treated under the Dublin Regulation that gives more protection
- Dublin Procedure cannot last for over 11 months to take charge of a person, or 9 months to take the seeker back

3.3.3.5. *EURODAC Regulation*

The EURODAC Regulation⁴⁹ establishes an EU asylum fingerprint database.

When a person applies for asylum, no matter where that person is in the EU, his/her fingerprints are conveyed to the EURODAC central system.

⁴⁹ European Parliament and the Council of the European Union (2013): *Regulation (EU) N° 603/2013* “EURODAC Regulation” Retrieved from: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0603>

This Directive improves the functioning of this database and system:

- Sets new limits for fingerprint data to be conveyed, reducing the time to send the data since the moment it is taken.
- Ensures that these mechanisms are in fully respect with the data protection legislation
- This data can be used for asylum purposes and to combat crime and terrorism, by allowing Europol to compare the fingerprints with those in the criminal database and, where permitted, with those in the Visa Information System.
- None of this data can be shared with third countries

3.3.3.6. Temporary Protection Directive

Nowadays, Europe is facing a terrible refugee crisis resulting in a massive influx of asylum seekers running away from war in the Middle East. Notwithstanding, these massive flows are overwhelming the capacities of Europe to tackle such a huge amount of applications. Thus, the Temporary Protection Directive⁵⁰ will play one of the most important roles in the current crisis that we will be deeper explaining in the following chapters since it provides temporary protection to refugees preventing them from being returned while the crisis is solved and all the asylum applications are processed.

This Directive provides minimum standards that reduce disparities between the policies of the Member States on the reception of displaced people

⁵⁰ Council of the European Union (2001): *Directive 2001/55/EC "Temporary Protection Directive"* Retrieved from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>

in a case of massive inflows and that foster solidarity among EU countries concerning receiving huge numbers of asylum seekers all at once.

This norm establishes harmonized rights for those who benefit from this protection:

- Residence permits (From 1 to 3 years)
- Information on temporary protection
- Access to employment
- Accommodation or housing
- Social welfare
- Medical Care
- Education for minors
- Family reunification
- Access to common asylum procedure

Member States might be required to be solidary and balance the beneficiaries of temporary protection all over the EU territory, keeping the right to return and exclude people who are a threat to public order and a threat due to terrorism acts.

4. EUROPEAN UNION MIGRATION INSTITUTIONAL FRAMEWORK

So far, the process of this research has shown us the increasing complexity of this phenomenon. The differences within migration, the causes and the effects linked to the movements as well as the crisis against which Europe had to fight all over the history, have uncovered the obstacles that our community is facing nowadays. For this purpose, we have also analyzed the whole existing legislation that the European Union has available to tackle the problem and to look for the most humanitarian a suitable solution for everyone.

Nevertheless, to accomplish this goal and to make sure that the human rights are being guaranteed, new and better measures are being undertaken, the existing rules are respected and put into practice, and the health and security conditions of migrants are protected, it becomes of an extreme importance the existence of agencies, international organizations, NGO's, and networks. Therefore, this chapter will explain the functioning and the role that all the organizations supporting migration play in the current scenario in Europe.

Within the Organizations supporting migration we can establish different categories depending on the scope of such organization.

In this research, we will display the most relevant agencies divided in two diverse categories: Global Organizations depending on United Nations and European Regional Organizations.

4.1. INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)⁵¹

The OIM was created in 1951 and it is the most important international organization dealing with migration. It collaborates in close relation with some governmental and non-governmental partners.

The OIM is composed by 162 Member States, 9 countries with the status of observers and offices within over 100 countries. The aim of the organization is to promote ordered human migration for the great of all.

The work of this entity consists of encouraging international cooperation for migration, helping find practical solutions to migratory crisis, and offering humanitarian aid to those in need.

The main issues that this Organization manages are:

- Migration Law
- International Dialogue about Migration
- Partnerships
- Policies and Research on Migration
- Volunteer Return and Integration
- Immigration and Borders Management
- Migration and development
- Migration and Climate Change
- Humanitarian Emergency Situations (IOM, 2016)

⁵¹ International Organization for Migrations (2016). *International Organization for Migrations* Retrieved May 2016 from: <http://www.iom.int/es>

4.2. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)⁵²

The UNHCR, created in 1950, is the United Nations Organism in charge of protecting refugees and people forced to move due to pursuits or conflicts and of promoting lasting solutions through volunteer settlement in the country of origin or in the country of destiny

This UN Agency strives for supporting in the following fields:

- Asylum and Migration
- Health, food and education assistance
- Global Needs Evaluation
- Institutional Strengthening
- Environment
- Family Reunification
- Fundraising
- Emergency Response
- Lasting Solutions

This organism helps Stateless people, Refugees, Asylum applicants, Returnees... all over the world (Africa, America, Asia-Pacific, Europe and Middle East). (UNHCR, 2016).

⁵² United Nations High Commissioner for Refugees (2016). *United Nations High Commissioner for Refugees*. Retrieved May 2016 from: <http://www.unhcr.org>

4.3. FRONTEX⁵³

In 2014 the Council of the European Union passed the Regulation (EC) N° 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union⁵⁴. With this Regulation⁵⁵ Frontex was created.

This Agency eases and improves the accomplishment of the existing and future EU policies and measures concerning border management. It contributes to encourage the freedom and security of EU citizens.

Frontex contributes to the efficient control of people and surveillance of external borders and trains national security forces to reach the minimum border standards. These are the main missions and task that Frontex copes with:

- Joint Operations with EU Member States
- Training of National Border Guards
- Risk Analysis
- Research
- Providing rapid responses
- Assisting Member States in joint return operations
- Information Systems

Frontex collaborates in close partnerships with other Agencies such as:

⁵³ FRONTEX (2016) *Frontex* Retrieved May 2016 from: <http://www.frontex.europa.eu>

⁵⁴ Council of the European Union (2004) *Regulation 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*. Retrieved from: http://www.ec.europa.eu/dgs/home-affairs/pdf/fr_reg_consolidated_en.pdf

⁵⁵ This Regulation has been amended by two other Regulations: Regulation (EC) N° 863/2007 and Regulation (EU) N° 1168/2011

Europol, CEPOL, and EASO (Frontex, 2016)

4.4. EUROPEAN POLICE OFFICE (EUROPOL)⁵⁶

Europol was created in 2009 on the ground of the Council Decision 2009/371/JHA establishing the European Police Office⁵⁷. This organism cooperates with EU States' police forces to improve the prevention and fight against the international crime, terrorism, and people smuggling.

Europol eases exchanges of information, provides criminal analyses and helps coordinate cross border operations. It was originally created in 1999 but it was conferred the status of agency in 2010. (Europol, 2016)

The 2016-2020 strategic agenda focuses on three main goals:

- Europol will be the EU criminal information hub, providing information sharing capabilities to law reinforcement authorities in the Member States
- Europol will provide the most effective operational support and expertise to the Member States investigations by developing and employing a comprehensive portfolio of services (Against terrorism, Organized Crime, Cybercrime...)
- Europol will be an efficient organization with effective governance arrangements and a positive reputation (Europol Strategy, 2016-2020)

⁵⁶ EUROPOL (2016) *Europol* Retrieved May 2016 from: <http://www.europol.europa.eu>

⁵⁷ Council of the European Union (2009) *Decision 2009/371/JHA establishing the European Police Office* Retrieved from: <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:121:0037:0066:EN:PDF>

4.5. EUROPEAN ASYLUM SUPPORT OFFICE (EASO)

The European Asylum Office (EASO) was set up by the Regulation (EU) 439/2010⁵⁸ and its main objectives are:

- Accomplishing close cooperation among EU countries in terms of asylum requests by sharing and exchanging information, handing in language support, and training asylum officials.
- Supporting countries in need under certain pressure by establishing an early warning system, by assigning experts to deal with massive asylum applications and provide proper reception facilities.
- Collecting a relation of the best and worse annual practices to build a report on the asylum situation.

EASO's principles to accomplish the issues are:

- Support and assistance to Member States' asylum systems
- Cooperation and equality among MS
- Provide analysis and evaluation on asylum data
- Cooperate with other European Institutions respecting the competencies of every country and being completely fair and transparent (EASO, 2016)⁵⁹

⁵⁸ European Parliament and the Council of the European Union (2010) *Regulation (EU) N° 439/2010 establishing a European Asylum Support Office* Retrieved from: <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF>

⁵⁹ EASO (2016) *European Asylum Support Office* Retrieved May 2016 from: <http://www.easo.europa.eu>

4.6. EUROPEAN AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE (EU – LISA)

Eu- LISA is the agency in charge of the operational tasks for the Information Systems oriented to border management, migration and asylum such as: SIS II, VIS and EURODAC. It assures that all the necessary measures are adopted and that all the information exchanges are in full compliance with the data protection legislation (Eu-LISA, 2016)⁶⁰.

⁶⁰ EU-LISA (2016) *European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice* Retrieved May 2016 from: <http://www.eulisa.europa.eu>

5. CURRENT REFUGEES CRISIS IN THE EUROPEAN UNION

In this chapter we will examine the refugee crisis over the last two years, when it is due to have happened but first of all we want to explain that we are focusing on this special crisis and in this specific type of migration (asylum) not only because of the massive press diffusion but also because it is the moment in Europe when asylum applications have reached a peak being twice the figure of previous years (See table 5.1). It is commonly known that asylum is not a new concept and that asylum seekers have existed over the last decades but we would like to know why it has become so relevant nowadays, apart from the increment in volume of applications.

Table 5.1: Asylum applications from 2008 to 2015

GEO/TIME	2008	2009	2010	2011	2012	2013	2014	2015
European Union (28 countries)	225.150	263.835	259.400	309.040	335.290	431.090	626.960	1.321.600
Belgium	15.165	21.615	26.080	31.910	28.075	21.030	22.710	44.660
Bulgaria	745	855	1.025	890	1.385	7.145	11.080	20.365
Czech Republic	1.645	1.235	775	750	740	695	1.145	1.515
Denmark	2.350	3.720	5.065	3.945	6.045	7.170	14.680	20.935
Germany	26.845	32.910	48.475	53.235	77.485	126.705	202.645	476.510
Estonia	15	40	35	65	75	95	155	230
Ireland	3.855	2.680	1.935	1.290	955	945	1.450	3.275
Greece	19.885	15.925	10.275	9.310	9.575	8.225	9.430	13.205
Spain	4.515	3.005	2.740	3.420	2.565	4.485	5.615	14.780
France	41.840	47.620	52.725	57.330	61.440	66.265	64.310	75.750
Croatia						1.075	450	210
Italy	30.140	17.640	10.000	40.315	17.335	26.620	64.625	84.085
Cyprus	3.920	3.200	2.875	1.770	1.635	1.255	1.745	2.265
Latvia	55	60	65	340	205	195	375	330
Lithuania	520	450	495	525	645	400	440	315
Luxembourg	455	480	780	2.150	2.050	1.070	1.150	2.505
Hungary	3.175	4.665	2.095	1.690	2.155	18.895	42.775	177.135
Malta	2.605	2.385	175	1.890	2.080	2.245	1.350	1.845
Netherlands	15.250	16.135	15.100	14.590	13.095	13.060	24.495	44.970
Austria	12.715	15.780	11.045	14.420	17.415	17.500	28.035	88.160
Poland	8.515	10.590	6.540	6.885	10.750	15.240	8.020	12.190
Portugal	160	140	155	275	295	500	440	895
Romania	1.175	960	885	1.720	2.510	1.495	1.545	1.260
Slovenia	255	190	240	355	295	270	385	275
Slovakia	895	805	540	490	730	440	330	330
Finland	3.670	4.910	3.085	2.915	3.095	3.210	3.620	32.345
Sweden	24.785	24.175	31.850	29.650	43.855	54.270	81.180	162.450
United Kingdom		31.665	24.335	26.915	28.900	30.585	32.795	38.800

Fuente: EUROSTAT, 2016

5.1. CURRENT SITUATION: MAIN FIGURES

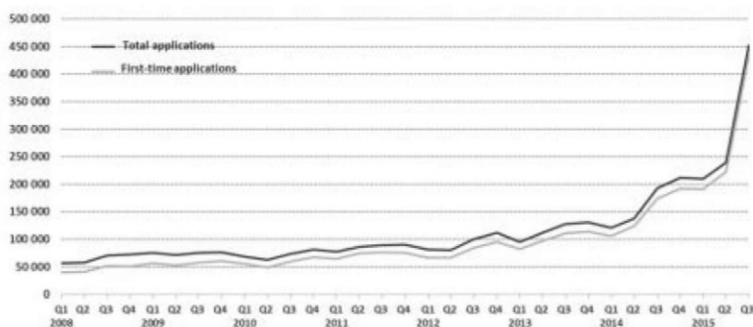
In this section, we will analyze the figures that show the behavior of the refugee crisis and which have been the trends during the last two years, 2014 and 2015.

It is important to remember at this point of the report that we are focusing on the asylum part of the concept of migration, being this, the protection of people who flee from wars and conflicts in their own countries and that have the right to be protected in the country where the asylum seeker applies.

5.1.1. The beginning of the crisis and its evolution

To start with the examination of these trends and the current situation in the refugee crisis we will observe the figures of the last quarter of the year 2015 since this is the period where the crisis was aggravated.

Graph 5.1: Total and first-time asylum applicants 9 in the EU+ since January 2008

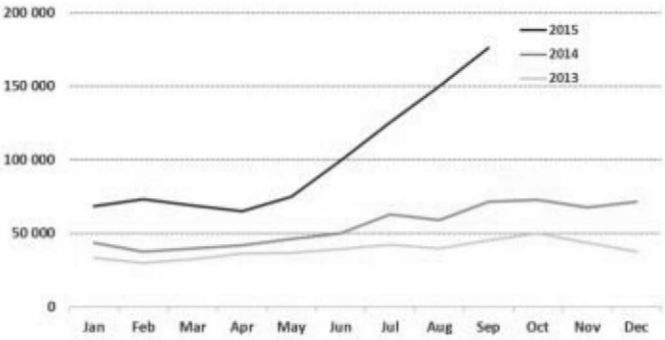


Source: EASO (2015)

As can be seen from the graph, this is the moment where the real crisis starts and the number of asylum applicants⁶¹, rocket. The total number of applications in this quarter rose by 89% (459975) compared to the previous quarter (Q2 2015: 242845). Furthermore, in comparison with the third quarter of 2014 and 2013, this number is even bigger: +139% and +262% respectively, which shows the positive tendency described by the asylum applications.

If we observe the monthly trend of asylum applicants we can extract some other conclusions as well.

Graph 5.2: Total asylum applicants in the EU+ since January 2013 (monthly trend)



Source: EASO (2015)

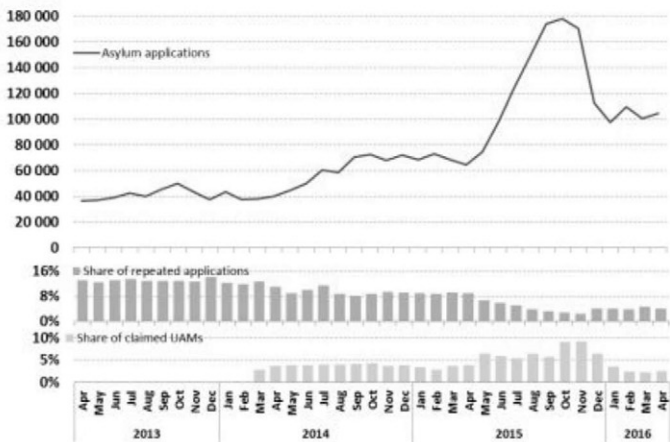
The number of applications in 2015 is higher all over the year in comparison to the previous two years. All of them experienced an increment in the second half of the year, which is more accentuated in the year 2015. From

⁶¹ Total applicants: all persons having submitted an application for international protection as defined in Article 2 (h) of Qualification Directive or having been included in such application as a family member. First-time applicants for international protection are those who lodged an application for the first time in a given Member State. When data for first-time applicants are not available on Eurostat, total applicants are considered first-time applicants.

these graphs and figures we can conclude that the refugee crisis and the uncontrolled influx of immigrant seeking for asylum started in May 2015.

Nevertheless, it is also relevant to study the most recent figures available concerning asylum requests, which belong to April 2016 and the first quarter of 2016.

Graph 5.3: Total Asylum Applications since April 2013



Source: EASO (2016)

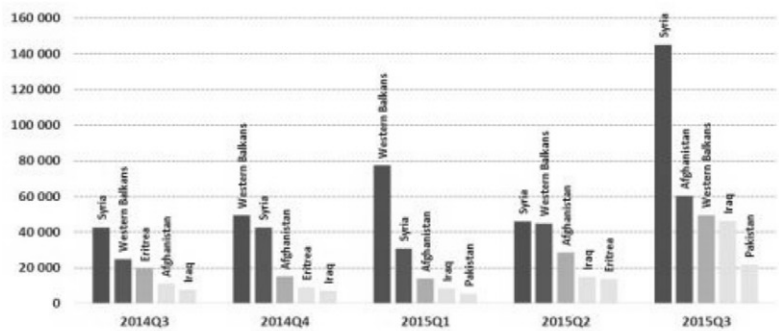
We can see in the chart that there was a profound decrement from October 2015 to January 2016 where it remained mainly with a flat tendency. This can be triggered by the fact that the situation in the European borders was unsustainable that the humanitarian conditions with which the asylum seekers were treated while their asylum applications were processes were very poor. Therefore the “calling effect” was stopped and the influx of asylum requests

was reduced. Furthermore, the implementation of the EU- Turkey agreement, which we will explain in further detail later, has also contributed to a substantial depression in the number of applications. From January to April 2016 roughly 412000 applications were lodged in the EU+⁶² countries. Moreover, we can conclude that the highest peak of the crisis so far has been produced between September and October 2015.

5.1.2. Asylum seekers main countries of origin

Another fundamental aspect of our research is the main countries of origin of those asylum seekers to better understand the validity of their applications and the reasons that have driven them to leave their countries.

Graph 5.4: Main citizenships/groups of citizenship of asylum applicants, Q3 2014 – Q3 2015



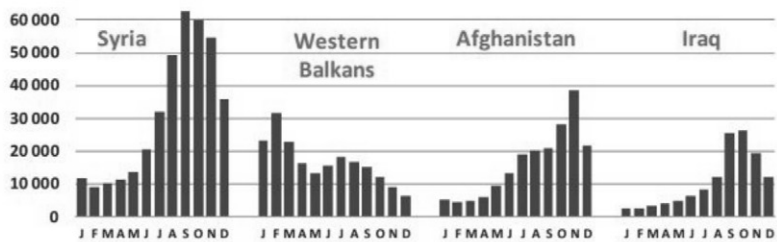
Source: EASO (2015)

⁶² The EU+ is composed of EU-28 plus Norway and Switzerland.

As can be concluded from the Graph 9.3 the two main countries of origin are Syria and the Western Balkans, exchanging the first position between them over the last year. The most remarkable points of this timeline are the second quarter of 2015 with the drop of Western Balkan applicants (-42%) due to some administrative measures taken by some of the EU+ countries; and the huge raise of Syrian applicants in the third quarter of 2015, where the real crisis rocketed, with a number three times bigger than in the previous quarter (148000 applications in Q3 2015) showing that the main characters in the summit of this crisis of refugees has been Syrians.

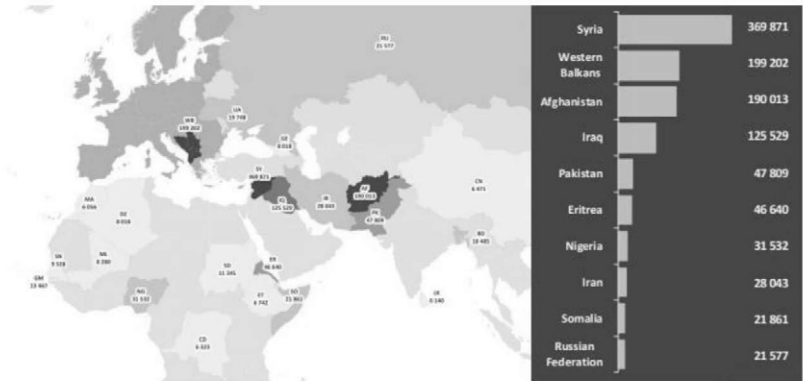
Nonetheless, to better comprehend the composition of the countries of origin of the asylum seekers in Europe, we will display a graph by countries and explain the behavior of each country trends’.

Graph 5.5: Main citizenships/groups of citizenship of asylum applicants in 2015 by country (monthly)



We can observe again that while the number of applicants from the Western Balkans is decreasing the number of Syrian applicants is raising rapidly all over the year 2015.

Figure 5.1: Map with the countries of origin of the Asylum applicants in the EU+



Source: EASO (2015)

Syria: In 2015, EU+ countries registered 369871 applications lodged by Syrian citizens. The influx of Syrian asylum applicants increased significantly from May and reached its peak in September with over 63000 applicants in EU+ countries in a single month.

Western Balkan (WB): Considered as a group, the number of applications from nationals of all six WB countries represented 15 % of all applications in the EU+ in 2015, totaling 199202. Applications by citizens of Kosovo and Albania each accounted for 6 % of the total (respectively 72855 and 68193 applications).

Afghanistan: 190013 Afghans applied for international protection in EU+ countries in 2015

Iraq: The number of applications by Iraqi citizens reached 125 529 in 2015

Iran: Applications from citizens of Iran increased sharply at the end of 2015 with a total of 28 043 applications in 2015

Pakistan: In 2015, a total of 47 809 Pakistani nationals applied for international protection in EU+ countries

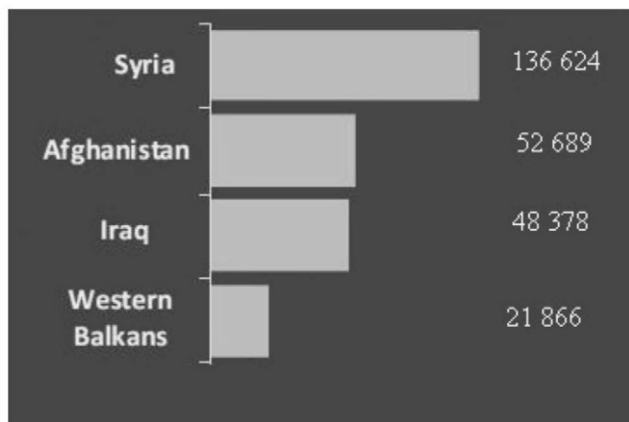
Eritrea: The number of Eritrean applicants changed only slightly compared to 2014 with 46 640 applications in 2015 – the vast majority arriving by boat in Italy. The seasonal pattern observed was also similar to 2014, with Eritrean applications lower in the winter months and increasing to a monthly level of 5 000 to 6 000 in the summer months.

Nigeria: The number of applications lodged by Nigerian nationals increased by half compared to 2014 and reached a 2015 total of 31 532. The seasonal pattern in the monthly numbers also show an increase during the summer months, culminating in the highest level in September with 4 203 applications throughout EU+ countries.

Furthermore, we can see in the next figure the total number of applications by country of origin in the first quarter of 2016⁶³ to observe the most recent data available.

⁶³ As the EASO Q1 2016 Quarterly Asylum Report is not available yet in the webpage at May 2016, the data shown has been calculated adding up the data provided in the Latest Asylum Trends Reports from January to April 2016.

Figure 5.2: Main Countries of Origin in the first quarter of 2016



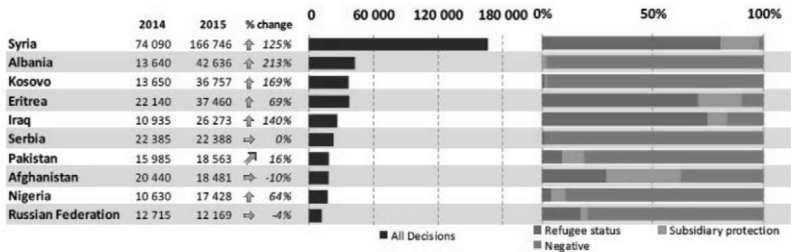
Source: Own elaboration from the data of: EASO (2016)

5.1.3. Decisions issued by the European Union

Once we have seen the number of asylum applications in the past years and the countries where the asylum seekers mainly come from, we will examine one aspect that has become extremely important to understand the refugee crisis, the decisions issued by the European Union.

We remember that either the refugee status or the subsidiary protection, are granted by the international law in cases of war, conflict, political pursuit etc. where the live of the migrant is at risk.

Graph 5.6: Number and type of decisions issued in first instance in EU+



Source: EASO (2015)

Therefore, as can be seen from the graph 9.5, not all asylum applications are positive, meaning that not all asylum seekers have the requirements to be granted with either the refugee status or the subsidiary protection. Furthermore, we can observe that there is a substantial difference in the number of positive decisions between some countries and the others. This might be triggered by the conditions in the country of origin i.e. it is more likely to be granted the refugee status to an immigrant coming from Syria, which a country in war for 5 years and with a high presence of terrorist groups than in Nigeria where the economic conditions are supposed to be the main reason to come to Europe.

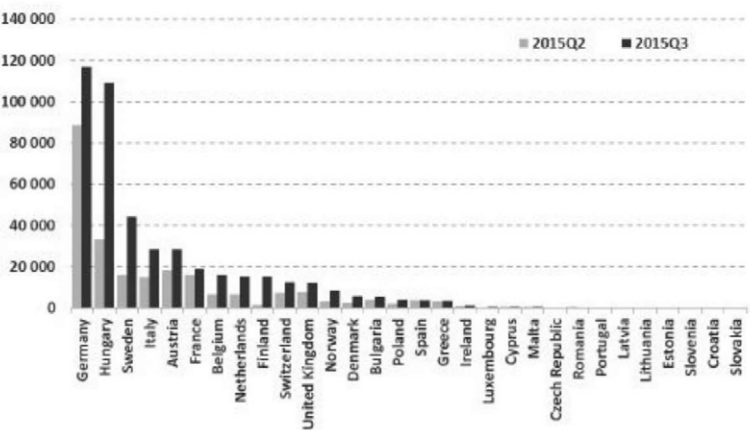
This enlighten a debate on how difficult is to process and identify every single case, individually, to decide whether the asylum should be granted or not. In the graph we can see that Syria, Eritrea, Iraq and Afghanistan are the countries that issue the highest number of positive decisions.

5.1.4. Main Countries of Destiny

In order to study the pressure under which some countries are due to the massive applications we need to comprehend why this situation happens and which are the preferred countries for the asylum seekers.

We will deal with data from the third quarter of 2015, date where the refugee crisis was aggravated.

Graph 5.7: Total asylum applicants in European destination countries in Q2 and Q3 of 2015



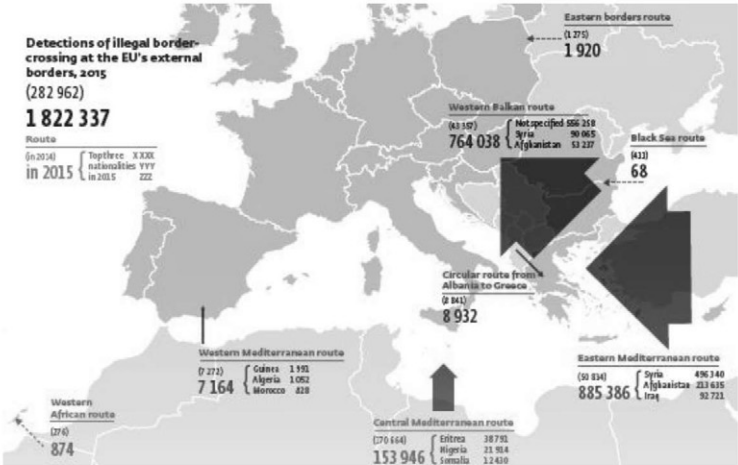
As can be observed from the graph, Germany is the country that receives the highest number of applications, followed by Hungary and Sweden. This means that the asylum seekers also search for a country where the economic conditions are favorable. The case of Hungary is special because the most of those applications are later absconded and changed to other countries, and this is because Hungary is located in one of the crossing routes to Europe.

This situation brings up the debate on the pressure that some countries are under, and the inefficiency of the Dublin Regulation in assigning a balanced responsibility for the countries to process asylum applications (See section 9.2.3)

5.1.5. Main Routes to cross the European External Borders

Due to the location of the man countries of origin and the transport used by immigrants trying to cross the EU borders illegally, we can spot some routes that carry the biggest influxes of immigrants.

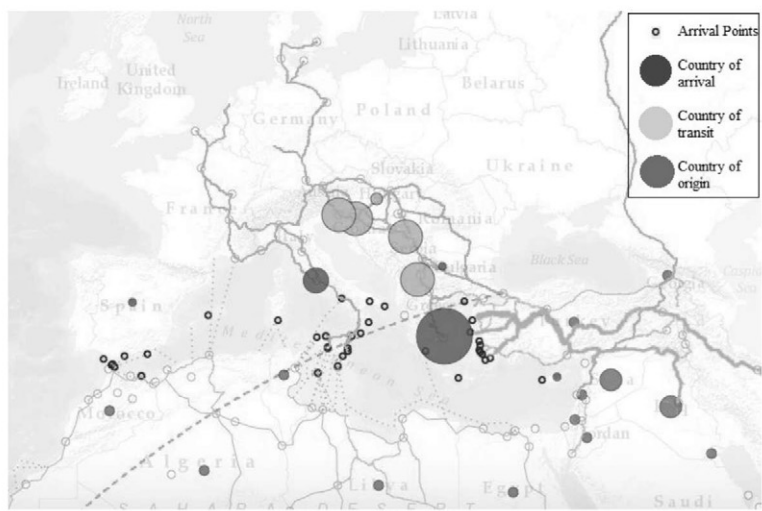
Figure 5.3: Detections of illegal border-crossing at the EU’s external borders, 2015



In this graph, we can see that the most important cross point is the Western Balkans' route with 764038 immigrants, representing the 42% of the total 1822337 people illegally crossing the EU external borders.

In the following figure, we will be able to see precisely, which are the routes and hotspots of asylum seekers' arrivals and the path they try to follow to reach the preferred countries (see point 9.1.4)

Figure 5.4: Main Immigration Transit Routes in Europe



Source: IOM (2016)

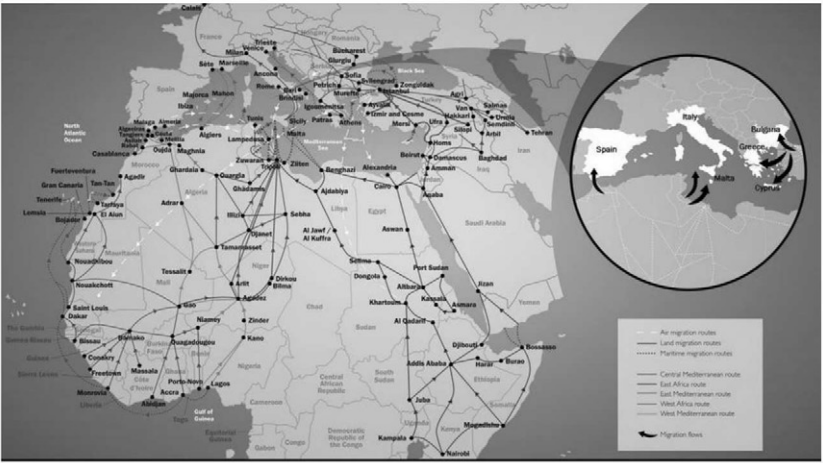
As extracted from the figure, the main countries of first arrival to Europe are, ordered by decreasing volume of arrivals: Greece (857363 arrivals in 2015 and 157813 from January to May 2016, from which the 99% are sea arrivals); Italy (153842 arrivals in 2015 and 46.518 from January to May 2016); Bulgaria

(31.174 arrivals in 2015 and 3446 from January to May 2016); Spain (3.845 arrivals in 2015 and 5.905 from January to May 2016); and Cyprus (269 arrivals in 2015 and 28 from January to May 2016)

Furthermore, the main transit countries are, from southern to northern: Macedonia, Serbia, Croatia, and Hungary.

In the following figure we can appreciate the routes in further detail and explanation:

Figure 5.5: Main Migration Routes to cross EU



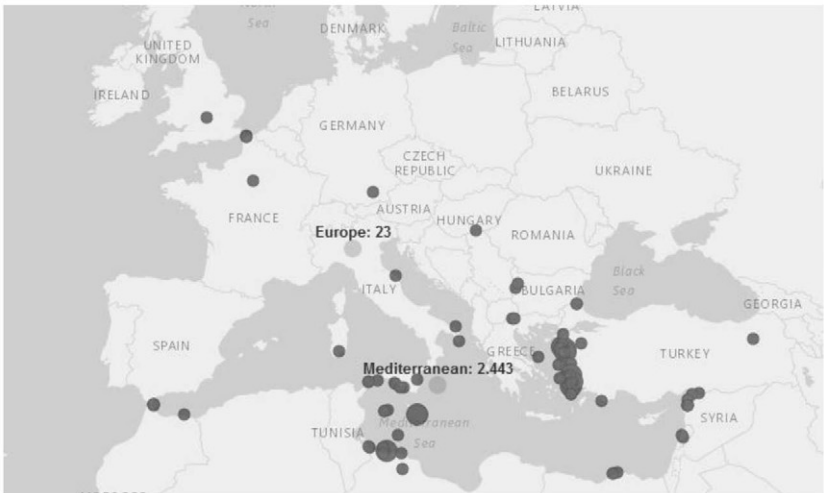
Source: IOM. (2016)

According with this thorough research of the International Organization for Migrations, there are 5 clear different routes: Central Mediterranean Route, East Africa Rout, East Mediterranean Route, West Africa Route, and West Mediterranean Route. The East Mediterranean Route is the most relevant in the refugee crisis with the biggest influx of immigrants.

5.1.6. Refugee Crisis Casualties

It is terrible to analyze this section but we consider necessary to remember the humanitarian aspect of the crisis and the danger that travelling to Europe represents for the asylum seekers, who move themselves in extreme poor conditions and that risk their lives in the attempt of seeking better live conditions and in the attempt to protect themselves from terrorism and war.

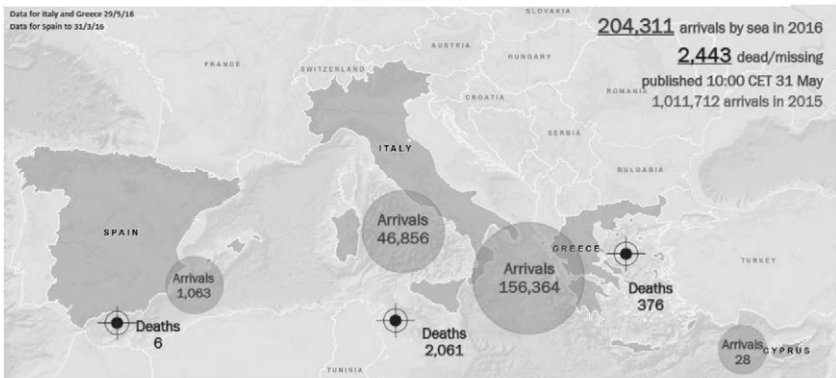
Figure 5.6: Number of missing or dead people from January to May



Source: IOM. (2016)

Last year 2015, the IOM reported 1828 missing or dead people from January to May 2016 in the Mediterranean, totaling at the end of the year 3770 missing or dead people. The same period in 2016 counts on 2443 missing or dead people, which is a higher figure compared to 2015.

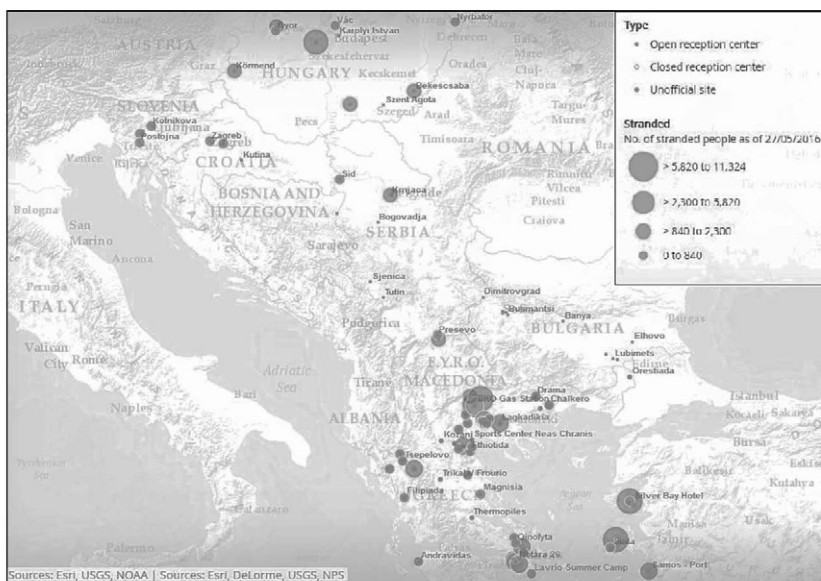
Figure 5.7: Map of arrivals and deaths from January to May 2016 in the Mediterranean



5.1.7. Stranded Migrants and Refugees

To finish this section on the current situation of the refugee crisis, we must study another humanitarian aspect, which is the most worrying feature of the crisis for the European Union. This is the fact that there are a lot of asylum seekers that have not reached the country they were heading and find themselves stranded in refugee camps without knowing whether they will get somewhere or not. Furthermore, the conditions in which they are, are not the most suitable, taking into account the number of minors and children present there. This has been the reason for conflicts and social dispute all over the refugee crisis for the measures taken by the transit countries of building dangerous fences or throwing teargases to the refugees.

Figure 5.8: N° of stranded migrants and refugees in Europe as of 25 May 2016



Source: IOM (2016)

At 25 of May 2016 there were 58306 stranded migrants and refugees in the arrival and transit countries of the Western Mediterranean Route: Greece (53293), Serbia (291), Macedonia (335), Slovenia (348), Croatia (89), and Hungary (2202). The biggest and most famous hotspot has been the refugee camps in Idomeni, a Greek city in the border with Macedonia.

The need to resettle and relocate these stranded migrants has resulted in some agreements that we will explain later in the next sections of this report (See 9.2).

5.2. CHALLENGES, TRENDS AND SOLUTIONS

5.2.1. EU-Turkey Agreement

On the 18th of March 2016, European Prime Ministers and Turkey agreed on ending up with the illegal migration coming from Turkey to the European Union to provide this crisis with a ordered, safe and legal pathway to guaranteed the humanitarian and sustainable management of the problem.

This agreement consists of the following measures:

- All immigrants either asylum applicants or not, crossing from Turkey to the Greek Islands since the 20th of March 2016 will be returned to Turkey.
- For every Syrian who is returned to Turkey, one Syrian will be relocated from Turkey to Europe (mainly Germany as the logistic center in the EU) directly.
- When the illegal flows are controlled or substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated.
- Turkey will adopt any necessary measure to avoid any new land or sea routes from being created
- The European Union will allocate at least €6 billion to Turkey under the Facility for Refugees
- EU and Turkey are committed to work in close cooperation on improving

the Customs Union

- There will be steps towards the visa liberalization with the aim of removing the visa requirements for Turkish citizens in the EU.
- The EU and Turkey will cooperate to get better the humanitarian situation in Syria.

Figure 5.9: Roadmap of the Resettlement process established in the EU-



Source: Own elaboration from the data of the European Commission, 2016

People applying for asylum in Greece will have their applications treated individually, in line with EU and international law regulation and the principle of *non-refoulement*. There will be individual interviews, individual assessments and rights of appeal. There will be no automatic returns of asylum applicants.

The EU asylum rules allow Member States in certain clearly defined

circumstances to declare an application “inadmissible” i.e. to reject the application without examining it

There are two legal possibilities that could be defended for declaring asylum applications inadmissible, in relation to Turkey:

- *First country of asylum* (Article 35 of the Asylum Procedures Directive): where the person has been already recognized as a refugee in that country or otherwise enjoys sufficient protection there;
- *Safe third country* (Article 38 of the Asylum Procedures Directive): where the person has not already received protection in the third country but the third country can guarantee effective access to protection to the readmitted person.

When applying the "safe third country" concept, any return decision is suspended automatically while the appeal is being treated.

When applying the "first country of asylum" concept, there is a possibility to make a request to suspend the transfer while the appeal is being treated. (European Commission, 2016)

5.2.2. Stronger and Smarter Borders⁶⁴ in the EU: Entry-Exit System

The Entry-Exit System is an Information Exchange procedure that seed-up, ease and reinforce border control management for third country nationals

⁶⁴ There have been some other steps in the field of information exchange, e.g. the air companies are now obliged to provide with the information of the passengers on board of both intra communitarian flights and flights between the EU and a third country. This will ease the fight against terrorism and will help capture possible criminals.

coming to the EU. This system will apply to all non-EU citizens who are admitted for a short-stay in the Schengen Area (visa required or visa exempt) (maximum 90 days in any 180 day period)

EES will register the name, type of travel document and biometrics (4 fingerprints and the digital facial image) and the date and place of entry and exit. This will be completely connected to the VIS and the information will be stored up to a maximum of 5 years. (European Commission, 2016)

5.2.3. The Reform of the Dublin Regulation

The so called Dublin Regulation⁶⁵ is the legislative tool that dictates the process of an asylum application and the criteria used to establish which country is responsible of that application. Currently this Regulation has some weaknesses and presents some challenges:

The country in charge of processing the asylum application is usually the country where the asylum seeker arrives to, and it happens to occur that the vast majority of asylum applicants arrive to the same countries putting these countries under terrible strain and in an uneven situation

Furthermore, the common asylum system should be equally implemented in all the countries and the same receiving conditions should be offered by every country, however, the differences of deployment make some countries more attractive. Thus, some asylum applicants refuse to provide the fingerprints and the rest of the information required in the arrival country because this would

⁶⁵ See section 7.10.3.4 for further details on the Dublin Regulation

mean that this country would be processing its application. On the contrary, they try to continue the journey until the country they prefer. This situation provokes an unbalanced situation in Europe, where some countries have to be in charge of the most of asylum applications.

Therefore, this improvement intended by the European Commission tries to deal with these challenges to make the Asylum Request Procedure more efficient and balanced. These are the undertaken measures: (European Commission, 2016)

- Reinforcing the EURODAC system
- Establishing a European Union Agency for Asylum
- A fairer system based on solidarity: with this system it will be possible to determine when a country is under too much pressure based on the country's size and wealth (50% weighting of the size of the population and of the Total Gross Domestic Product. If one country decides not to be solidary and receive the allocated applications should contribute with €250000 per applicant.
- A more efficient system with shorter times for transfers

CONCLUSIONS

Once we have finished our research, analyzed what international migration is about, its categories, explicative theories, its causes and its effects to gain a solid knowledge on the topic; and dug into the specific case of the European Union by examining the main historical flows of migration, the normative and the institutional framework as well as the current refugee crisis to better comprehend how migration is regulated at the communitarian level and how sensitive the situation might be nowadays we find ourselves in the condition to conclude that:

Migration is an extremely difficult topic owing to the great diversity of existing categories and players. Therefore, it is very complex to study and manage to provide effective solutions when some migratory crisis occurs. Furthermore, the effects that migration may provoke in society are multidisciplinary and affect many aspects of life. This way, it not easy to conclude if migration is positive or negative for a country since it depends on the discipline about which we were talking and if we are dealing with the country of origin of the destiny one.

However, we can assure that migration is systemically harmful for a country and that there are mechanisms and institutions to minimize the negative impact and foster the positive effects.

Due to this complexity is not weird to discover that migration, being a very ancient phenomenon, has been the focus of study of many important thinkers, economists, politicians... who established many theories along history to get closer to the understanding of the essence of this movement.

Moreover, as far as the European Union is concerned, migration has played an important role in certain moments of its History with massive flows of migrants. These crises were solved satisfactorily and the effects on the European Society were not absolutely negative. Therefore, we consider that, although it will be difficult, the current refugee crisis will be solved.

Plus, we have realized that migration has been the center of many efforts along the years, by the European Union that has legislated on the topic since the beginning of the communitarian project. However, the current refugee crisis shows that this legislation has not overcome the pressure and that this is still not enough, remaining still a long road to be followed and some of the measures that are being implemented nowadays do not seem to be welcome by Europeans who start wondering the suitability and efficiency of the European Union.

If we move to the refugee crisis, we can conclude that this is a very difficult problem that involves humanitarian, security, political, social and economic aspects and that has become some important nowadays because of the context in which it has happened: a strong economic crisis in the European Union, a lack of integration and solid leadership in the Community, inexistence of advances in fiscal and monetary policies... If the situation had been more prosper, the refugee crisis might not have become so relevant.

As regards the humanitarian face of the problem we realize on the one hand that asylum is disposed in the Universal Declaration of Human Rights and the European Convention on Human Rights, ensuring that every person subject to a death threat and running from an armed conflict or persecution must be protected. On the other hand, we realized that the conditions in which asylum seekers are stranded in refugee camps over months are far from respect their humanity.

Concerning security, the refugee crisis is usually linked to terrorism and fear mainly because of the precedence of the majority of refugees and the main cause of the crisis: Syrian War and the terrorism in Syria, Iraq and Afghanistan.. The terrorist group ISIL⁶⁶ has claimed to have leaked warriors among the refugees and this is triggering an atmosphere of islamophobia that makes the topic substantially sensitive. Also, we have seen that all the legislation share an exception to carry out the legal obligations, which is the keeping of the public order and the maintenance of security.

In terms of politics, the refugee crisis has been proved to be the spark that has enlightened nationalisms and the proliferation of the extreme right ideologies in the European Union raising the number of euro skeptics.

The refugee is also complex because the first arrivals of asylum seekers have provoked a “*call effect*” that attracts not only more asylum seekers but also people coming for economic factors. This way, it becomes difficult to process such a huge number of applications and differentiate when the refugee status should be granted and when it should not.

Finally, we can conclude that the countries are unevenly hit by the crisis and that some of the Member States are under much more pressure. This is mainly owing to two different factors: first, some countries are located in the transit routes to come across our borders and second, most of asylum seekers do not apply for asylum in the first country of arrival in Europe but try to illegally reach the desired country where the economic conditions will be better to start a new life.

⁶⁶ Islamic State of Iraq and Levant is a terrorist organization occupying parts of some countries in the Middle East.

To sum up, as far as my personal opinion is concerned, migration is a very sensitive issue that must be tackled from respect, solidarity and coherence. The refugee crisis will be solved but we must assure that the refugees' humanitarian conditions are guaranteed in the meanwhile and the European Union has to trust on solidarity among the Member States, that must be as close and united as ever, to continue stepping forward on the European Union Migration Policy.

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